

Ashley M. Gjovik, JD
In Propria Persona
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ASHLEY GJOVIK, *an individual*,

Plaintiff,

vs.

APPLE INC, a corporation,

Defendant.

Judge: The Honorable Edward Chen

Case No. 3:23-CV-04597-EMC

Ashley Gjovik's Declaration

in Support of Plaintiff's Reply

re: Plaintiff's Motion to Disqualify

Civil L.R. 7-3, 7-5

**DECLARATION OF ASHLEY M. GJOVIK IN SUPPORT OF PLAINTIFF'S REPLY
IN SUPPORT OF MOTION TO DISQUALIFY ORRICK, HERRINGTON &
SUTCLIFFE LLP**

Pursuant to 28 U.S.C. § 1746, I, Ashley M. Gjovik, hereby declare as follows:

My name is Ashley Marie Gjovik. I am a self-represented Plaintiff in this above captioned matter. I make this Declaration based upon my personal knowledge and in support of my pending Motion to Disqualify the Defendant's counsel]. I have personal knowledge of all facts stated in this Declaration, and if called to testify, I could and would testify competently thereto.

I submit these exhibits in support of my Motion & Reply because they are directly relevant to Apple's opposition and to the key factual issues before the Court. It is well established that courts may consider extrinsic evidence when ruling on a motion to disqualify counsel (*In re Complex Asbestos Litig.*, 232 Cal. App. 3d 572, 588 (1991)). Courts recognize that motions to disqualify opposing counsel are fact-intensive and require an examination of the record and supporting evidence (*Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1145 (1999)).

Additionally, courts permit parties to submit new evidence in reply if it rebuts arguments made in the opposition. Because Apple's opposition contains factual misstatements, mischaracterizations, and omissions, Plaintiff submits these exhibits to correct the record and provide the Court with the necessary factual basis to resolve the motion. Courts have broad discretion to consider documents submitted with motions and declarations when they assist in ruling on a motion. Because these exhibits establish Apple's attorneys' conflicts of interest, their involvement in retaliatory conduct, and their manipulation of legal proceedings, they are directly relevant to Plaintiff's disqualification motion.

1. Attached hereto as [Exhibit A](#) is a true and correct copy of Defendant's discovery responses, claiming Attorney Client Privilege for facts over a six-month period, as referenced on page 2 of the Reply.
2. Attached hereto as [Exhibit B](#) is a true and correct copy of Defendant's initial disclosures, which do not include it's only witness for the U.S. Dept. of Labor proceeding, and responses to Request for Production, which refuse production, as referenced on page 3 of the Reply.
3. Attached hereto as [Exhibit C](#) is a true and correct copy of the April 1 2024 Meet & Confer transcript, documenting quoted text on multiple pages in the Reply.
4. Attached hereto as [Exhibit D](#) is a true and correct copy of the documents related to Apple's legal interactions with Appleseed, as mentioned on page 5-6 of the Reply.
5. Attached hereto as [Exhibit E](#) is a true and correct copy of Defendant's communications with U.S. Dept. of Labor in the Ashley Gjovik v. Apple Inc OSHA investigation, and the OSHA investigation log, showing Appleseed as the only witness, as referenced on multiple pages of the Reply.
6. Attached hereto as [Exhibit F](#) is a true and correct copy of Apple's counsel's request for copies of court records from Appleseed's lawsuit against the Plaintiff, and the notices of appearance for MWE and Orrick, as mentioned in the Reply.

7. Attached hereto as [Exhibit G](#) is a true and correct copy of Appleseed's communications with OSHA as a defense witness for Apple, as released by U.S. Dept of Labor in Dec. 2024, and mentioned in the Reply.
8. Attached hereto as [Exhibit H](#) is a true and correct copy of the chapter in my U.S. Dept. of Labor complaint that Apple reported to OSHA as "leaking," which includes information that reveals Apple filed a falsified Informed Consent Form for the Gobbler study, as referenced on page 8 of the Reply.].
9. Attached hereto as [Exhibit I](#) is a true and correct copy of some of the social media posts I alleged that I believe are not only Apple, but I now believe are the Orrick attorneys, as referenced on page 10 of the Reply.

The documents attached as exhibits are referenced in my Reply and provide supporting evidence for the arguments therein. These documents include records produced by Apple, communications, court filings, agency determinations, and other materials directly relevant to the issues before the Court.

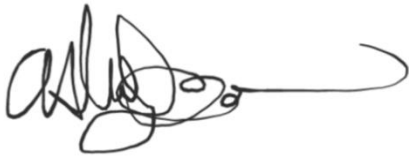
Finally, Apple's counsel also accuses me of misconduct due to typos in my legal citations in my motion, and accuses me of using AI to generate the complaint. I already disclosed I started using AI tools to assist me after Judge Chen warned me I cannot be late on deadlines – because I was already trying to finish as quickly as I could, and without additional resources, or extensions, then the quality is what must

suffer, unfortunately. I did confirm all four cases are relevant and they do support my arguments. However, the complaint unfortunately used quotes around summaries (not actually quotes), and the citations for *Smith v. Superior Court* were slightly incorrect, with the correct citation being *Smith v. Superior Court*, 68 Cal.2d 547, 68 Cal. Rptr. 1, 440 P.2d 65 (Cal. 1968).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 24th day of February 2025, in Boston, Massachusetts

Signature:

A handwritten signature in black ink, appearing to read 'Ashley M. Gjovik', with a long horizontal flourish extending to the right.

/s/ Ashley M. Gjovik

Pro Se Plaintiff

Email: legal@ashleygjovik.com

Physical Address: Boston, Massachusetts

Mailing Address: 2108 N St. Ste. 4553 Sacramento, CA, 95816

Phone: (408) 883-4428

EXHIBIT A

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)
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1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: +1 650 614 7400
Facsimile: +1 650 614 7401

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Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,
Plaintiff,

v.

APPLE INC.,
Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S INITIAL
DISCOVERY UNDER GENERAL
ORDER 71**

1 KATE E. JUVINALL (SBN 315659)
2 kjuvinall@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 631 Wilshire Blvd., Suite 2-C
5 Santa Monica, CA 90401
6 Telephone: +1 310 633 2800
7 Facsimile: +1 310 633 2849

8 RYAN D. BOOMS (SBN 329430)
9 rbooms@orrick.com
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 1152 15th Street, N.W.
12 Washington, D.C. 20005-1706
13 Telephone: +1 202 339 8400
14 Facsimile: +1 202 339 8500

15 Attorneys for Defendant
16 Apple Inc.
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1 Defendant Apple Inc. responds to Northern District of California General Order No. 71:
2 Initial Discovery Protocols For Employment Cases Alleging Adverse Action (“Gender Order 71”)
3 as follows:

4 Defendant provides these responses based on the information and documents currently
5 available to it, given that discovery in this action is ongoing. Nothing contained in these responses
6 shall in any way limit Defendant’s ability to make all uses at trial or otherwise of the information
7 or documents referenced herein or of any information, documents or other evidence that may be
8 discovered in the future. Defendant has made its best effort to respond accurately to each category,
9 but reserves the right to amend its objections and responses upon completion of its search for
10 responsive documents.

11 Defendant objects to each and every category to the extent that it seeks information
12 protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other
13 applicable privilege. If supplying any of the requested documents would result in waiving any
14 applicable privilege or objection based on any such privilege, Defendant objects to providing the
15 documents and will not do so. If Defendant inadvertently produces any documents falling within
16 any applicable privilege, Defendant does not intend to waive the applicable privilege.

17 Defendant objects to each and every category to the extent that it seeks documents and/or
18 information that is protected from disclosure by the rights of privacy of third-party non-litigants.

19 Defendant objects to each and every category to the extent that it seeks electronically stored
20 information (“ESI”) from sources that are not reasonably accessible because of undue burden and
21 expense. To the extent that any categories call for ESI from sources that are not reasonably
22 accessible without undue burden or cost within the meaning Federal Rule of Civil Procedure
23 26(b)(2)(B), or for which the burden or cost of retrieval and review would not be proportional to
24 the needs of the case (including where the burden or expense would outweighs its likely benefit),
25 Defendant will not supply or render such ESI.

26 Subject to and without waiving any of the above objections, and incorporating each of them
27 by this reference into each response below, Defendant responds to General Order 71 as follows:

28 ///

1 **1. Production of Documents By Defendant**

2 Category A:

3 All communications concerning the factual allegations or claims at issue in this lawsuit
4 among or between: (i) The plaintiff and the defendant; (ii) The plaintiff's manager(s), and/or
5 supervisor(s), and/or the defendant's human resources representative(s).

6 Response to Category A:

7 Subject to the preliminary statement and foregoing objections set forth above, Defendant
8 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
9 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
10 After a diligent search and reasonable inquiry Defendant will produce, pursuant to a protective
11 order regarding the treatment of confidential information ("the Confidentiality Order"), non-
12 privileged communications concerning Plaintiff and the factual allegations or claims at issue in this
13 lawsuit directly related to her alleged wrongful termination, between Plaintiff and Yannick
14 Bertolus, Aleks Kagramanov, Ekelemchi Okpo, Dave Powers, Michael Steiger, Jenna Waibel,
15 and/or Dan West from March 1, 2021 to September 9, 2021. After a diligent search and reasonable
16 inquiry Defendant will also produce non-privileged correspondence concerning Plaintiff and the
17 factual allegations or claims at issue in this lawsuit directly related to her alleged wrongful
18 termination, between or among Yannick Bertolus, Aleks Kagramanov, Ekelemchi Okpo, Dave
19 Powers, Michael Steiger, Jenna Waibel, and/or Dan West from March 1, 2021 to September 9,
20 2021.

21 Category B:

22 Responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that
23 rely upon any of the same factual allegations or claims as those at issue in this lawsuit.

24 Response to Category B:

25 Subject to the preliminary statement and foregoing objections set forth above, Defendant
26 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
27 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
28 The only complaints made by Plaintiff of which Defendant is aware that may be related to her

wrongful termination claims in this lawsuit are certain administrative charges she filed with the National Labor Relations Board (“NLRB”) and with the United States Department of Labor (“DOL”). Defendant will not be producing its responses to the NLRB Charges because the NLRB cases are still open, and as a result the responses are not available to Plaintiff nor are they subject to a FOIA request. See NLRB Freedom of Information Act Manual, <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/march2008foiamanual.pdf>, at 87 (stating that “[t]he FOIA is not intended to function as a private discovery tool,” and citing *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) and *Coastal States Gas Corp. v. U.S. Dep’t of Energy*, 644 F.2d 969, 982 (3d Cir. 1981)). As for Plaintiff’s case before the DOL, to the extent that any factual allegations overlap, Defendant will not be producing its response because on December 8, 2023, the DOL issued a finding of no cause on Plaintiff’s claims, and Plaintiff communicated to Defendant that same day her intent to appeal. As of the date of this filing, Plaintiff’s time to appeal the DOL Secretary’s Findings has not yet run.

Category C:

Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.

Response to Category C:

Subject to the preliminary statement and foregoing objections set forth above, Defendant responds: After a diligent search and reasonable inquiry, Defendant will produce Plaintiff’s personnel file, which includes her offer letter and termination letter.

Category D:

The plaintiff’s personnel file, in any form, maintained by the defendant, including files concerning the plaintiff maintained by the plaintiff’s supervisor(s), manager(s), or the defendant’s human resources representative(s), irrespective of the relevant time period.

Response to Category D:

Subject to the preliminary statement and foregoing objections set forth above, Defendant responds: After a diligent search and reasonable inquiry, Defendant will produce Plaintiff’s personnel file. No other files identified in Category D exist.

1 Category E:

2 The plaintiff's performance evaluations and formal discipline.

3 Response to Category E:

4 Subject to the preliminary statement and foregoing objections set forth above, Defendant
5 responds: After a diligent search and reasonable inquiry Defendant will produce, pursuant to a
6 Confidentiality Order, Plaintiff's performance reviews. Defendant will also produce the
7 termination letter related to Plaintiff.

8 Category F:

9 Documents relied upon to make the employment decision(s) at issue in this lawsuit.

10 Response to Category F:

11 Subject to the preliminary statement and foregoing objections set forth above, Defendant
12 responds: After a diligent search and reasonable inquiry Defendant will produce, pursuant to a
13 Confidentiality Order, non-privileged documents relied on to make the decision to terminate
14 Plaintiff's employment.

15 Category G:

16 Workplace policies or guidelines relevant to the adverse action in effect at the time of the
17 adverse action. Depending upon the case, those may include policies or guidelines that address: (i)
18 Discipline; (ii) Termination of employment; (iii) Promotion; (iv) Discrimination; (v) Performance
19 reviews or evaluations; (vi) Misconduct; (vii) Retaliation; and (viii) Nature of the employment
20 relationship.

21 Response to Category G:

22 Subject to the preliminary statement and foregoing objections set forth above, Defendant
23 responds: After a diligent search and reasonable inquiry Defendant will produce policies relevant
24 to Plaintiff's alleged wrongful termination of employment (the only issues/claims not presently
25 subject to a pending motion to dismiss), including the Confidentiality and Intellectual Property
26 Agreement that Plaintiff signed, and relevant portions of Defendant's Business Conduct Policy and
27 EEO Policy. Defendant will produce its internal facing Misconduct and Discipline Policy pursuant
28 to a Confidentially Order.

1 Category H:

2 The table of contents and index of any employee handbook, code of conduct, or policies
3 and procedures manual in effect at the time of the adverse action.

4 Response to Category H:

5 Subject to the preliminary statement and foregoing objections set forth above, Defendant
6 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
7 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
8 After a diligent search and reasonable inquiry, Defendant will produce the table of contents of its
9 Business Conduct Policy effective October 2020, which was in effect at the time of the alleged
10 adverse action at issue in this lawsuit (Plaintiff's termination).

11 Category I:

12 Job description(s) for the position(s) that the plaintiff held.

13 Response to Category I:

14 Subject to the preliminary statement and foregoing objections set forth above, Defendant
15 responds: Defendant will produce job descriptions for the particular position(s) that Plaintiff held
16 if it is able to locate any after a diligent search and reasonable inquiry.

17 Category J:

18 Documents showing the plaintiff's compensation and benefits. Those normally include
19 retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and
20 summaries of compensation.

21 Response to Category J:

22 Subject to the preliminary statement and foregoing objections set forth above, Defendant
23 responds: After a diligent search and reasonable inquiry Defendant will produce, pursuant to a
24 Confidentiality Order, non-privileged documents showing Plaintiff's compensation and benefits
25 from during her employment with Defendant.

26 Category K:

27 Agreements between the plaintiff and the defendant to waive jury trial rights or to arbitrate
28 disputes.

1 Response to Category K:

2 Subject to the preliminary statement and foregoing objections set forth above, Defendant
3 responds: After a diligent search and reasonable inquiry, no responsive documents exist.

4 Category L:

5 Documents concerning investigation(s) of any complaint(s) about the plaintiff or made by
6 the plaintiff, if relevant to the plaintiff's factual allegations or claims at issue in this lawsuit and not
7 otherwise privileged.

8 Response to Category L:

9 Subject to the preliminary statement and foregoing objections set forth above, Defendant
10 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
11 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
12 After a diligent search and reasonable inquiry, Defendant will produce, pursuant to a
13 Confidentiality Order, responsive, non-privileged, non-work-product documents that are directly
14 related to Plaintiff's alleged wrongful termination.

15 Category M:

16 Documents in the possession of the defendant and/or the defendant's agent(s) concerning
17 claims for unemployment benefits unless production is prohibited by applicable law.

18 Response to Category M:

19 Subject to the preliminary statement and foregoing objections set forth above, Defendant
20 responds: After a diligent search and reasonable inquiry, Defendant does not have any responsive
21 documents.

22 Category N:

23 Any other document(s) upon which the defendant relies to support the defenses, affirmative
24 defenses, and counterclaims, including any other document(s) describing the reasons for the
25 adverse action.

26 Response to Category N:

27 There is no operative answer on file. Defendant will produce non-privileged documents in
28 support of its defenses and affirmative defenses at the appropriate time after its answer is filed.

1 Defendant's investigation of Plaintiff's claims is ongoing and Defendant reserves the right to
 2 amend this response, to supplement documents produced in support of this response, and to rely on
 3 such information and documents as evidence in this action.

4 **2. Production of Information By Defendant**

5 Defendant has provided, to the best of its knowledge and ability at this time, complete and
 6 accurate information required by Rule 26(a)(1)(A) and General Order 71. As set forth below,
 7 Defendant reserves its right to supplement or delete from the responses below as more information
 8 is obtained through the discovery process.

9 Category A:

10 Identify the plaintiff's supervisor(s) and/or manager(s).

11 Response to Category A:

12 Linda Keshishoglou, Evan Buyze, and David Powers.

13 Category B:

14 Identify person(s) presently known to the defendant who were involved in making the
 15 decision to take the adverse action.

16 Response to Category B:

17 Defining "adverse action" as the termination of Plaintiff's employment, Yannick Bertolus
 18 made the decision to terminate Plaintiff's employment.

19 Category C:

20 Identify persons the defendant believes to have knowledge of the facts concerning the
 21 claims or defenses at issue in this lawsuit, and a brief description of that knowledge.

22 Response to Category C:

23 Defendant believes the following individuals are likely to have discoverable information
 24 relevant to facts regarding Plaintiff's claims for alleged wrongful termination of employment—the
 25 only issues/claims not presently subject to a pending motion to dismiss—as alleged with
 26 particularity in the pleadings:

- 27 1. Plaintiff (information regarding complaints to Defendant, and termination of
 28 Plaintiff's employment)

2. Yannick Bertolus (Hardware Engineering Vice President) (information regarding termination of Plaintiff's employment)
3. Aleks Kagramanov (Employee Relations Business Partner) (information regarding termination of Plaintiff's employment)
4. Ekelemchi Okpo (Employee Relations Business Partner) (information regarding complaints to Defendant and Defendant's policies)
5. David Powers (SW Development Engineer Director) (information regarding complaints to Defendant)
6. Michael Steiger (Environmental Health and Safety Manager) (information regarding complaints to Defendant and Defendant's policies)
7. Jenna Waibel (Employee Relations Business Partner) (information regarding complaints to Defendant and Defendant's policies)
8. Dan West (Hardware Development Engineer Senior Director) (information regarding complaints to Defendant)

Except for Plaintiff, all individuals identified above may only be contacted through Defendant's counsel. Following discovery and receipt of additional information regarding the nature of Plaintiff's claims, additional witnesses may be identified, and Defendant reserves the right to supplement this list accordingly.

Category D:

State whether the plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action. State whether the defendant has provided information to any third party concerning the application(s). Identify any documents concerning any such application or any such information provided to a third party.

Response to Category D:

To Defendant's knowledge, Plaintiff has not applied for disability benefits or social security disability benefits. As a result, Defendant has not provided information to any third party concerning any such application.

1 Dated: December 18, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

2
3 By: /s/ Jessica R. Perry

4 JESSICA R. PERRY
Attorneys for Defendant
5 APPLE INC.
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From: Juvinall, Kate <kjuvinall@orrick.com>
Sent: Tuesday, December 19, 2023 1:29 PM
To: Ashley M. Gjovik (Legal Matters)
Cc: Booms, Ryan; Riechert, Melinda; Mantoan, Kathryn G.; Perry, Jessica R.; Mahoney, Brian; harry.johnson; kelcey.phillips@morganlewis.com; mark.stolzenburg@morganlewis.com; crystal.carey@morganlewis.com
Subject: RE: Gjovik v Apple | Requesting signed instruments under CLC § 432

Ashley,

As you know, the federal rules of civil procedure allow you to request these types of documents during discovery after the Rule 26(f) conference occurs.

We are not aware of any statute governing contracts that allows you to seek these types of documents outside of the formal discovery process. If you are referring to a specific statute, please send us the citation.

Best,
Kate

From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>
Sent: Friday, December 15, 2023 3:09 PM
To: Juvinall, Kate <kjuvinall@orrick.com>
Cc: Booms, Ryan <rbooms@orrick.com>; Riechert, Melinda <mriechert@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Mahoney, Brian <brian.mahoney@morganlewis.com>; harry.johnson <harry.johnson@morganlewis.com>; kelcey.phillips@morganlewis.com; mark.stolzenburg@morganlewis.com; crystal.carey@morganlewis.com
Subject: RE: Gjovik v Apple | Requesting signed instruments under CLC § 432

[EXTERNAL]

FYI, I talked with two people at CalDOL DIR today about Section 432 and both said it applies to ex-employees of California employers. I'm now waiting for written confirmation from the California Labor Commissioner's Office.

—
Ashley M. Gjovik
BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Thursday, December 14th, 2023 at 8:06 PM, Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com> wrote:

Thank you for the update. I received your email about Section 432. I find the legal analysis in the cases cited questionable, and neither of the two cases are controlling, so I will be researching the topic further. I also plan to call the CalDOL office to discuss it with them as well, so I will get back to you later on my challenge.

I will also request a copy of the Face Gobbler ICF from Apple once more, now under contract law. Apple has cited that alleged Gobbler ICF in their defense, and claim it is evidence supporting their decision to terminate me. However, Apple has not provided me a copy of that document, and when I attempted to access that document prior to my termination, I could not -- the prior link said it no longer existed. If I was to sign such a thing, it assumably had

obligations that lasted longer than 1 year, and thus statute of frauds is implicated. If there is no proof of signed document, then there is no contract. Further, I will be arguing bad faith conduct by Apple, and further evidence of lack of consent and lack of mutual assent, if they continue to refuse to provide a copy of the document they claim is symbolic of my 'consent'. Finally, without providing me even confirmation the document does even exist still, I will also be treating the document as assumed to be non-existent in my amended complaint and opposition.

If my request is denied again, I will of course also be requesting the document in discovery.

Thanks,
-Ashley

—
Ashley M. Gjøvik
BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Thursday, December 14th, 2023 at 7:18 PM, Juvinall, Kate <kjuvinall@orrick.com> wrote:

Hi Ashley – confirming receipt of your email. We separately responded today regarding your LC section 432 request and will follow-up regarding your request under the CPRA.

Thank you,

Kate

From: Ashley M. Gjøvik (Legal Matters) <legal@ashleygjovik.com>
Sent: Friday, December 8, 2023 6:35 PM
Cc: Booms, Ryan <rbooms@orrick.com>; Riechert, Melinda <mrieichert@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Mahoney, Brian <brian.mahoney@morganlewis.com>; harry.johnson <harry.johnson@morganlewis.com>; kelcey.phillips@morganlewis.com; mark.stolzenburg@morganlewis.com; crystal.carey@morganlewis.com
Subject: RE: Gjøvik v Apple | Requesting signed instruments under CLC § 432

[EXTERNAL]

Removing OMM who confirmed they're no longer on this either

Hello,

Contracts

First, since Gobbler is the crux of Apple's legal defense in this matter, I'd think that the alleged Gobbler NDA would be easily on hand and it should only take a couple days at most to send over. Its been 10 days now. Please send or confirm it no longer exists.

CPRA

Second, the US DOL decision today (which I am appealing on both claims) appears to make direct reference to my personal information that was on my personal iPhone and personal iCloud account, including my discussions with non-employees on their iPhones and my personal iPhone, which must have been collected by Apple, and shared by Apple. Prior filings also reference my personal text messages (copied by Global Security) and my social media posts. All of this is personal information.

Considering this, under the CPRA, I am requesting copies of my personal information held by Apple including "where it came from, retention policies, and third-party disclosures." Among more standard types of data, personal information also includes "geolocation, biometrics, and internet activity" data. [see [Morgan Lewis article](#)]. This also includes but is not limited to: "information collected and analyzed concerning a consumer's health... and sex life." [see [Orrick article](#)].

If Apple would like to deny the request for certain types of data, please provide information on what exception they relied on to deny the request and for what category of data they applied it.

I also opt out of the sale or sharing of that data, automated decision making based on that data, and ask to limit the use/disclosure of that information.

That information includes, but is not limited to: *"The CPRA also grants employees a new right to limit use and disclosure of "sensitive personal information," which is defined to include (1) precise geolocation data, (2) racial or ethnic origin, (3) union membership, (4) the contents of certain employee email and text messages, and (5) biometric information."* [see [Morgan Lewis article](#)].

Finally, I reserve my right to also request a deletion of that data.

I am filing this request as an ex-Apple employee, but also as someone with an active business based in California who owns and uses Apple products, thus a standard 'consumer.'

A business cannot discriminate against a consumer because the consumer exercised any of the consumer's California rights, unless the price or service difference is reasonably related to the value provided to the business by the consumer's data. [see [Orrick article](#)].

Thank you.

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Sunday, December 3rd, 2023 at 11:08 PM, Ashley M. Gjøvik (Legal Matters) <legal@ashleygjovik.com> wrote:

Thank you for the update, MWE. Moving MWE to bcc.

Morgan Lewis - I now assume you are assigned to all five NLRB charges (including the two open cases).
You guys should fix up your notices of appearance - it still shows MWE on most of the NLRB case webpages.

If Morgan Lewis is not retained for some of the NLRB charges, please confirm, and let me know if I should ask Apple who is, or if Apple is handling them directly, or if you know who else is handling them if not you.

Thank you.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Saturday, December 2nd, 2023 at 5:17 PM, Foster, Christopher
<Cfoster@mwe.com> wrote:

MWE does not represent any party in these referenced matters.

Thank you,

Chris

CHRISTOPHER FOSTER

Partner

McDermott Will & Emery LLP 415 Mission Street, Suite 5600, San Francisco, CA 94105-2616

Tel +1 628 218 3826 **Email** cfoster@mwe.com

Biography | **Website** | **vCard** | **Twitter** | **LinkedIn**

* Admitted to practice law in California, Washington, and Idaho

From: Ashley M. Gjovik (Legal Matters)

<legal@ashleygjovik.com>

Sent: Saturday, December 2, 2023 9:18 AM

To: Foster, Christopher <Cfoster@mwe.com>;

McConnell, Julie <JmccConnell@mwe.com>; Booms,

Ryan <rbooms@orrick.com>; Riechert, Melinda

<mrieichert@orrick.com>; Mantoan, Kathryn G.

<kmantoan@orrick.com>; Juvinall, Kate

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<deberhart@omm.com>

Subject: Re: Gjovik v Apple | Requesting signed instruments under CLC § 432

Some people who received this message don't often get email from legal@ashleygjovik.com. [Learn why this is important](#)

[External Email]

+ OMM if they're still on this too

Removing Sayed at MWE who per OoO apparently left in Feb '23 (@Chris, Ron left around that time too, and Julie is on leave, so if there are others on your firm now on my NLRB cases, please loop them in).

Can someone from one of these firms please at least confirm receipt of my request? I sent this Tuesday and haven't heard anything back from any of you.

If this request needs to be submitted directly to Apple, please let me know - however y'all are representing Apple and I'm supposedly supposed to go through you with my requests and questions during litigation/adjudication.

It's unclear to me if the NLRB NDA adjudication is now represented by both MWE and Morgan Lewis, or if Morgan Lewis is only on the Cook email and my 1/10/22 witness intimidation and witness retaliation charge, and MWE is still on the NDAs and employment policies and 8/26 & 9/16/21 unfair labor/retaliation charges. If someone can clear that up too please, it would be appreciated.

I also don't know who Apple hired to represent them on the California Dept of Labor cases but I assume that is moot now that I rolled them into the federal civil suit.

Can we also do a roles and responsibilities matrix, maybe?

Thank you.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Tuesday, November 28th, 2023 at 12:25 AM, Ashley M. Gjøvik (Legal Matters) <legal@ashleygjojik.com> wrote:

Hello Apple lawyers,

I am requesting copies of all instruments I signed (physical and electronic signatures) relating to my obtainment and holding of employment at Apple Inc.

This request is governed by California Labor Code, Article 3, § 432. The litigation exception to § 1198.5 does not apply to § 432.

I am requesting that the Face Gobbler related instrument(s) be released first and expeditiously, and not saved for a bulk release with the others. If Apple does not have a copy of any signed Face Gobbler related instruments, I would like confirmation of that fact and swiftly.

For all instruments, I am requesting to receive records digitally, which should not be an issue as almost all of them were signed digitally. You can share the documents via email attachments or via a shared document repository as long as it allows me to download them without alteration.

As we are over two years into this litigation, I'd expect these records should already be on hand, and as such I do not expect any prolonged delays.

Thank you for your cooperation. Please let me know if you have any questions.

-Ashley

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

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Please visit <http://www.mwe.com/> for more information about our Firm.

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Attorneys for Respondent

Apple Inc.

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

ASHLEY GJOVIK,

Complainant,

v.

APPLE INC.,

Respondent.

OALJ Case No.: 2024-CER-00001

OSHA Case No.: 9-3290-22-051

**RESPONDENT APPLE INC.'S INITIAL
DISCLOSURES PURSUANT TO
JANUARY 19, 2024 NOTICE OF
DOCKETING AND 29 C.F.R. §
18.50(c)(1)**

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15 Attorneys for Respondent
16 Apple Inc.
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Pursuant to the January 19, 2024 Notice of Docketing and 29 C.F.R. § 18.50(c)(1), Respondent Apple Inc. (“Apple” or “Respondent”) hereby submits the following Initial Disclosures to Complainant Ashley Gjovik (“Complainant”). Apple makes these Initial Disclosures based upon information currently available to it and reserves the right to supplement all disclosures as discovery progresses. Apple makes these disclosures concerning the claims and defenses properly at issue in OALJ Case No. 2024-CER-00001, which are limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9610 claim and defenses addressed in the Secretary of Labor’s December 8, 2023 findings in OSHA Case No. 9-3290-22-051.¹ *See* 29 C.F.R. § 24.100 *et seq.* (setting forth procedures required to make and appeal determinations regarding alleged whistleblower retaliation under CERCLA).²

These disclosures are made without waiving the right to object on the grounds of competency, privilege, relevancy and materiality, hearsay or any other proper ground and the right to object on any and all grounds, at any time, to any discovery request or proceeding involving or relating to the subject matter of these Initial Disclosures.

Category 1: The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

The following are persons who may have information that Respondent may use to support its defenses in this case:

1. Complainant (information regarding complaints to Respondent regarding the issues raised in Complainant’s August 29, 2021 (ECN76833) complaint that are properly

¹ The December 8, 2023 Findings addressed issues raised by Complainant regarding 825 Stewart Drive in complaints filed on August 29, 2021 (ECN76833) and November 2, 2021 (ECN78416). However, the November 2, 2021 complaint is not at issue in this appeal because it addressed only a claim under the Sarbanes-Oxley Act.

² Complainant also appears to seek review of claims under the Solid Waste Disposal Act, Resource Conservation and Recovery Act, and Clean Air Act, but any such claims were not timely raised in her initial complaint and are thus not properly at issue. *See* 29 C.F.R. §§ 24.103, 24.105. To the extent the ALJ decides to consider any of these claims, Respondent reserves the right to amend these initial disclosures accordingly.

the subject of this proceeding (the “Complaints”), and the reasons for the alleged adverse action(s))

2. Yannick Bertolus (Hardware Engineering Vice President) (information regarding termination of Complainant’s employment)
3. Aleks Kagramanov (Employee Relations Business Partner) (information regarding termination of Complainant’s employment)
4. Ekelemchi Okpo (Employee Relations Business Partner) (information regarding the Complaints to Respondent, the alleged adverse action(s), and Respondent’s policies)
5. Michael Steiger (Environmental Health and Safety Manager) (information regarding the Complaints to Respondent and Respondent’s policies)
6. Jenna Waibel (Employee Relations Business Partner) (information regarding the Complaints to Respondent, the alleged adverse action(s), and Respondent’s policies)

Except for Complainant, all individuals identified above may be contacted through Respondent’s counsel. Following discovery and receipt of additional information regarding the nature of Complainant’s claims, additional witnesses may be identified, and Respondent reserves the right to supplement this list accordingly.

Category 2: A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

The following are the descriptions by category of all documents and things that Respondent currently has in its possession, custody or control that may be used to support its defenses:

- The personnel file Respondent maintained on Complainant
- Complainant’s compensation and payroll records
- Documents regarding Complainant’s Complaints (as defined above) to Respondent from March 2021 through Complainant’s termination of employment
- Documents sufficient to show that Northrop Grumman is the responsible party for the relevant Superfund site cleanup

- Documents regarding Respondent’s policies and procedures in effect from March 2021 to Complainant’s termination of employment
- Documents regarding the termination of Complainant’s employment

To the extent these documents consist of electronically stored information, these documents are located on servers, computers, and other electronic storage media, that are either (a) located at Respondent’s corporate headquarters or in the possession of Respondent’s employees, or (b) in the possession of Respondent’s outside counsel. To the extent any tangible documents or things on these subjects exist in the possession, custody or control of Respondent, they are located at Respondent’s headquarters and may be obtained through Respondent’s outside counsel.

Category 3: A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under § 18.61 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

Apple does not claim any damages at this time.

Dated: February 9, 2024

By: /s/Jessica R. Perry

JESSICA R. PERRY

Attorneys for Respondent Apple Inc.

(Additional counsel on following page)

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Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S INITIAL
DISCLOSURES PURSUANT TO FED. R.
CIV. P. 26(A)(1)**

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Pursuant to Federal Rule of Civil Procedure 26(a)(1), Defendant Apple Inc. identifies the following witnesses and documents, and makes the following initial disclosures.¹ Defendant makes these disclosures based on information currently available to it at this time, following a good faith inquiry in accordance with Rule 26. Defendant reserves the right to amend and/or supplement these disclosures if and as any further information becomes available during discovery and to rely upon such information as evidence in this action. Defendant makes the following disclosures to expedite the discovery process and without waiving the Federal Rules of Evidence, including the protections of the attorney-client privilege, the work-product doctrine, and any other applicable privilege. Defendant expressly reserves its rights under those privileges and protections. By making these disclosures, Defendant does not concede that the disclosed evidence is relevant or admissible as evidence at trial, and reserves the right to assert any and all evidentiary objections.

Further, the only claims at issue in this lawsuit and not subject to Defendant's forthcoming motion to dismiss—due on July 15, 2024—are those directly related to the allegedly wrongful termination of Plaintiff's employment and/or alleged retaliation during the course of her employment. Thus, Defendant identifies individuals likely to have discoverable information regarding those factual allegations and claims clearly at issue, as well as documents, data compilations, and tangible things that Defendant may use to support its claims or defenses.

Rule 26(a)(1)(A): The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to

¹ Defendant does not believe it is required to provide initial disclosures under FRCP 26(a) because Northern District of California General Order No. 71: Initial Discovery Protocols For Employment Cases Alleging Adverse Action ("GO 71") applies. GO 71 "applies to all employment cases filed in this court after February 1, 2018, that challenge one or more actions alleged to be adverse." GO 71 by its terms is "intended to supersede the parties' obligations to make initial disclosures pursuant to F.R.C.P. 26(a)(1)" in applicable cases. Here, Plaintiff's case "challenge[s] one or more [employment] actions alleged to be adverse" in her wrongful termination and whistleblower retaliation claims. Defendant served its GO 71 disclosures on December 18, 2023 and supplemented those disclosures with additional document productions on April 5, 2024 and May 15, 2024; to date Defendant has produced 418 documents totaling 1,549 pages pursuant to GO 71. Plaintiff has indicated that she does not believe GO 71 applies to this case, and accordingly Defendant makes these FRCP 26(a)(1) disclosures without conceding that they are required in this matter. The parties met and conferred regarding topics set forth in the Standing Order for All Judges of the Northern District of California: Contents of Joint Statement Management Statement on June 25, 2024.

1 support its claims or defenses, unless solely for impeachment, identifying the subjects of the
2 information.

3 Subject to the preliminary statement set forth above, Defendant responds:

- 4 1. Plaintiff (information regarding complaints to Defendant, and termination of
5 Plaintiff's employment)
- 6 2. Yannick Bertolus (Hardware Engineering Vice President) (information regarding
7 termination of Plaintiff's employment)
- 8 3. Aleks Kagramanov (Employee Relations Business Partner) (information regarding
9 termination of Plaintiff's employment)
- 10 4. Ekelemchi Okpo (Labor Relations Business Partner) (information regarding
11 complaints to Defendant and Defendant's policies)
- 12 5. Michael Steiger (Environmental Health and Safety Manager) (information
13 regarding complaints to Defendant and Defendant's policies)
- 14 6. Jenna Waibel (Employee Relations Business Partner) (information regarding
15 complaints to Defendant and Defendant's policies)

16 Except for Plaintiff, all individuals identified above may only be contacted through
17 Defendant's counsel. Following discovery and receipt of additional information regarding the
18 nature of Plaintiff's claims, additional witnesses may be identified, and Defendant reserves the right
19 to supplement this list accordingly.

20 **Rule 26(a)(1)(B): A copy of, or a description by category and location of, all**
21 **documents, data compilations, and tangible things that are in the possession, custody, or**
22 **control of the party and that the disclosing party may use to support its claims or defenses,**
23 **unless solely for impeachment.**

24 Subject to the preliminary statement set forth above, Defendant responds:

- 25 1. E-mail communications concerning Plaintiff, complaints she made to Defendant
26 regarding perceived issues at 825 Stewart, and/or the termination of her employment
27 between Plaintiff and Yannick Bertolus, Antone Jain, Aleks Kagramanov, Antonio
28

1 Lagares, Ekelemchi Okpo, Helen Polkes, Dave Powers, Michael Steiger, Jenna
2 Waibel, and/or Dan West from March 1, 2021 to September 9, 2021.

3 2. E-mail communications concerning Plaintiff, complaints she made to Defendant
4 regarding perceived issues at 825 Stewart, and/or the termination of her employment
5 between or among Yannick Bertolus, Antone Jain, Aleks Kagramanov, Antonio
6 Lagares, Ekelemchi Okpo, Helen Polkes, Dave Powers, Michael Steiger, Jenna
7 Waibel, and/or Dan West from March 1, 2021 to September 9, 2021.

8 3. The personnel file Defendant maintained on Plaintiff.

9 4. Plaintiff's performance reviews.

10 5. Documents relied on to make the decision to terminate Plaintiff's employment.

11 6. Policies relevant to the termination of Plaintiff's employment.

12 7. Job descriptions for positions Plaintiff held.

13 8. Documents showing Plaintiff's compensation and benefits.

14 9. Documents that are directly related to Plaintiff's termination.

15 These documents are in the possession of Defendant's counsel.

16 Defendant reserves the right to supplement the categories of documents as more information
17 becomes available through the discovery process. By listing documents or categories of documents,
18 Defendant does not waive the right to object to discovery requests to which any document or
19 category of documents may be responsive.

20 **Rule 26(a)(1)(C): Computation of any category of damages claimed by the disclosing**
21 **party.**

22 Apple does not claim any damages at this time.

23 **Rule 26(a)(1)(D): Any insurance agreement under which any person carrying on an**
24 **insurance business may be liable to satisfy part or all of a judgment which may be entered in**
25 **the action or to indemnify or reimburse for payments made to satisfy the judgment.**

26 There is no applicable insurance policy that presently covers Plaintiff's claims in this
27 lawsuit.

1 Dated: July 9, 2024

ORRICK, HERRINGTON & SUTCLIFFE LLP

2
3 By:

Melinda Riechert

4 MELINDA S. RIECHERT
5 Attorneys for Defendant
6 APPLE INC.
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S
RESPONSES TO PLAINTIFF'S
PART 1, REQUEST FOR
PRODUCTION OF PHASE 1
DISCOVERY**

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Defendant Apple Inc. responds to Plaintiff Ashley Gjovik's Part 1, Request for Production of Phase 1 Discovery¹ ("Requests"), served on October 30, 2024, as follows:

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

The case file from Defendant's Employee Relations Case Management Platform concerning Jenna Waibel's investigation into Gjovik starting at or before March 2021 (or whatever it was coded as when Waibel became involved in March 2021) through September 10 2021. (Including notes or comments from people other than Waibel).

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Defendant does not have any documents responsive to this Request because Ms. Waibel never conducted an investigation into Plaintiff.

REQUEST FOR PRODUCTION NO. 2:

The case file from Defendant's Employee Relations Case Management Platform concerning Jenna Waibel's Investigation into Gjovik's concerns starting in March 2021 through September 10 2021. (Including notes or comments from people other than Waibel).

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Defendant objects to this Request to the extent it seeks information outside of the claims properly at issue in the Fourth Amended Complaint ("4AC") as explained in the Court's October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41. Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant objects to this Request to the extent it seeks disclosure of a confidential internal

¹ On October 1, 2024, the Court limited discovery to "Phase 1" discovery (*i.e.*, discovery needed for the settlement conference) on Counts 1 [wrongful termination] and 3 [retaliation] (which Apple did not contest at all in its motion to dismiss) and those parts of the retaliation claims above that were not challenged or otherwise survived." Dkt. 112 at 41. These Requests improperly seek information about a number of issues and claims outside of that scope, which is not relevant to Plaintiff's employment-related claims and for which discovery is thus not proper at this time.

1 Employee Relations investigation that includes sensitive and private information about third
2 parties. *See* Fed. R. Civ. Proc. 26(c).

3 Subject to and without waiving the forgoing objections, Defendant did not maintain a case
4 file concerning Ms. Waibel's investigation into concerns Plaintiff raised in an "Employment
5 Relations Case Management Platform." Defendant interprets "case file" to mean the investigation
6 documents maintained by Ms. Waibel relating to concerns raised by Plaintiff. Defendant has not
7 identified any responsive, non-privileged documents as the investigation was conducted at the
8 direction and under the supervision of counsel. Defendant will produce a categorical privilege log.

9 **REQUEST FOR PRODUCTION NO. 3:**

10 The case file from Defendant's Employee Relations Case Management Platform concerning
11 Ekelemchi Okpo's investigation into Gjovik's concerns starting in July 2021 through September
12 10 2021. (Including notes or comments from people other than Okpo).

13 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

14 Defendant objects to this Request to the extent it seeks information outside of the claims
15 properly at issue in the 4AC as explained in the Court's October 1, 2024 Order: Count I – Wrongful
16 Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count
17 VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41.
18 Defendant objects to this Request to the extent it seeks information protected from disclosure by
19 the attorney-client privilege and/or attorney work product doctrine. Defendant objects to this
20 Request to the extent it seeks disclosure of a confidential internal Employee Relations investigation
21 that includes sensitive and private information about third parties. *See* Fed. R. Civ. P. 26(c).

22 Subject to and without waiving the forgoing objections, Defendant did not maintain a case
23 file concerning Mr. Okpo's investigation into concerns raised by Plaintiff in an "Employment
24 Relations Case Management Platform." Defendant interprets "case file" to mean the investigation
25 documents maintained by Mr. Okpo relating to concerns raised by Plaintiff. Defendant has not
26 identified any responsive, non-privileged documents as the investigation was conducted at the
27 direction and under the supervision of counsel. Defendant will produce a categorical privilege log.

28 ///

REQUEST FOR PRODUCTION NO. 4:

The case file from Respondent's Employee Relations Case Management Platform concerning any investigation into Gjovik starting on August 4 2021 through September 10 2021. (Including notes or comments from people other than Okpo).

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Defendant objects to this Request to the extent it seeks information outside of the claims properly at issue in the 4AC as explained in the Court's October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41. Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant objects to this Request to the extent it seeks disclosure of a confidential internal Employee Relations investigation that includes sensitive and private information about third parties. *See* Fed. R. Civ. P. 26(c).

Subject to and without waiving the forgoing objections, Defendant did not maintain a case file regarding an investigation into Plaintiff from August 4, 2021 to September 10, 2021, in an "Employment Relations Case Management Platform." Defendant interprets "case file" to mean the investigation documents related to Aleks Kagramanov's investigation into Plaintiff posting confidential documents on the internet. Defendant does not have any responsive, non-privileged documents as the investigation was conducted at the direction and under the supervision of counsel. Defendant will produce a categorical privilege log.

REQUEST FOR PRODUCTION NO. 5:

All documents concerning the August 2021 "Issue Confirmation", document for Plaintiff [*sic*], and from document Plaintiff [*sic*], including drafts (with time stamps and/or metadata) and associated emails or other communications, through Sept. 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant objects to this Request to the extent it seeks information outside of the claims properly at issue in the 4AC as explained in the Court's October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count

VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41. Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant objects to this Request to the extent it seeks disclosure of confidential, sensitive, and private information about third parties. *See* Fed. R. Civ. P. 26(c).

Subject to and without waiving the forgoing objections, Defendant understands this Request to seek all documents concerning the August 2021 Issue Confirmation sent between Plaintiff and Defendant, including drafts. Defendant will produce all responsive, non-privileged documents located after a reasonably diligent search as they are kept in the usual course of business subject to entry of an appropriate protective order in this matter.

REQUEST FOR PRODUCTION NO. 6:

The Business Conduct system record for Complainant's August 2021 Business Conduct Complaint including any notes, updates, status, and/or resolution. Also any emails were sent by Business Conduct about the Complaint through Sept. 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Defendant does not have any documents responsive to this Request because the Business Conduct complaint that Gjovik filed in August 2021 (regarding a separate alleged conflict of interest) is not related to Plaintiff's claims presently at issue in the 4AC and as defined in the Court's October 1, 2024 Order. *See* Dkt. 112 at 38-41.

REQUEST FOR PRODUCTION NO. 7:

All indoor air testing results and reports, air test plans, cracked slab repair plans, cracked slab inspection reports, cracked slab sealing reports, SSD/SSV maintenance reports, engineer certifications of work performed, invoices, work orders, related to the CERCLA engineering controls at 825 Stewart Drive from Jan 1 2021 through Sept 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Defendant objects to this Request because it seeks information outside of the claims properly at issue in the 4AC as explained in the Court's October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count

VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41. Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant also objects to this Request on the grounds that it is overbroad and unduly burdensome, and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 8:

Any status report, meeting notes, or other type of summary sent to or from Gjovik’s management chain and/or Helen Polkes, Jenna Waibel, Ekelemchi Okpo, or Tony Lagares concerning the August 19 2021 US EPA inspection of 825 Stewart Drive, from July 25 2021 through Sept. 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Defendant objects to this Request because it seeks information outside of the claims properly at issue in the 4AC as explained in the Court’s October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41. Defendant objects to this Request to the extent it calls for information protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine. Defendant also objects to this Request on the grounds that it is overbroad and unduly burdensome, and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 9:

All documents in possession of Gjovik’s management chain, Helen Polkes, Jenna Waibel, Ekelemchi Okpo, Tony Lagares, Atone Jain, Michael Seiger, or Tom Huynh that concern both the Plaintiff and the property at 3250 Scott Blvd, from Sept. 1 2020 through Spet. [sic] 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Defendant objects to this Request because it seeks information outside of the claims properly at issue in the 4AC as explained in the Court’s October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41.

Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant also objects to this Request on the grounds that it is overbroad and unduly burdensome, and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 10:

Any “safety plan” or “EHS plan” or “operations and maintenance plan” for 825 Stewart Drive or 3250 Scott Blvd in place between Jan. 1 2020 and Sept. 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Defendant objects to this Request because it seeks information outside of the claims properly at issue in the 4AC as explained in the Court’s October 1, 2024 Order: Count I – Wrongful Discharge; Count II – Labor Code §1102.5 ¶168, lines 9-25; Count III – Labor Code §6310; Count VI – Labor Code §232.5 ¶182; and Count VII – Labor Code §96(k). *See* Dkt. 112 at 38-41. Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant also objects to this Request on the grounds that it is overbroad and unduly burdensome, and it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the forgoing objections, Defendant understands this Request to seek documents regarding Defendant’s voluntarily vapor intrusion mitigation program at 825 Stewart Dr. and/or 3250 Scott Blvd. Defendant has already produced all responsive documents located after a reasonably diligent search between Defendant and Plaintiff during her employment regarding Defendant’s voluntary vapor intrusion mitigation program at 825 Stewart Dr.: APL-GAELG_00000530, APL-GAELG_00000556, APL-GAELG_00000560, APL-GAELG_00000564, APL-GAELG_00000567, APL-GAELG_00000582, APL-GAELG_00000591, APL-GAELG_00000621, APL-GAELG_00000664, APL-GAELG_00000676, APL-GAELG_00000705, APL-GAELG_00000717, APL-GAELG_00000771, APL-GAELG_00000775, APL-GAELG_00000798, APL-GAELG_00000806, APL-GAELG_00000830, APL-GAELG_00000869, APL-GAELG_00000878, APL-GAELG_00000946, APL-GAELG_00000948, APL-

1 GAELG_00000950, APL-GAELG_00000955, APL-GAELG_00000959, APL-
 2 GAELG_00001186, APL-GAELG_00001190, APL-GAELG_00001200, APL-
 3 GAELG_00001205, APL-GAELG_00001208, APL-GAELG_00001361, APL-
 4 GAELG_00001377, APL-GAELG_00001391, and APL-GAELG_00001509.

5 Defendant is not producing any documents regarding the voluntary vapor intrusion
 6 mitigation program at 825 Stewart Dr. that were not provided to Plaintiff during her employment,
 7 as they are not responsive to Plaintiff's claims presently at issue in the 4AC and as defined in the
 8 Court's October 1, 2024 Order. *See* Dkt. 112 at 38-41. Nor is Defendant producing any documents
 9 regarding 3250 Scott Blvd., as they are also not relevant to the claims properly at issue in the 4AC
 10 and as defined in the Court's October 1, 2024 Order. *See id.*

11 **REQUEST FOR PRODUCTION NO. 11:**

12 All documents or communications with Gjovik's management chain, Helen Polkes, Jenna
 13 Waibel, Ekelemchi Okpo, or Tony Lagares, concerning Complainant's 2021 mid-year performance
 14 review, dated from Jan 1 2021 through Sept. 10 2021.

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

16 Defendant does not have any documents responsive to this Request because Defendant did
 17 not conduct a mid-year performance review for Plaintiff in 2021.

18 **REQUEST FOR PRODUCTION NO. 12:**

19 All documents or communications with Gjovik's management chain, Helen Polkes, Jenna
 20 Waibel, Ekelemchi Okpo, or Tony Lagares, concerning Complainant's 2021 annual performance
 21 review and compensation determination dated from Jan 1 2021 through Sept. 10 2021. This
 22 includes the peer feedback received in the HR tool from Gjovik's peers, and any drafts of the review
 23 in that tool.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

25 Defendant objects to this Request to the extent it seeks information protected from
 26 disclosure by the attorney-client privilege and/or attorney work product doctrine.

1 Subject to and without waiving the forgoing objections, Defendant will produce all
 2 responsive, non-privileged documents located after a reasonably diligent search as they are kept in
 3 the usual course of business. Defendant will produce a categorical privilege log.

4 **REQUEST FOR PRODUCTION NO. 13:**

5 Any drafts, comments, or revisions of the termination letter and notice sent to Complainant
 6 on Sept. 9 2021. (Please include timestamps when possible).

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

8 Defendant objects to this Request to the extent it seeks information protected from
 9 disclosure by the attorney-client privilege and/or attorney work product doctrine.

10 Subject to and without waiving the forgoing objections, Defendant has already produced all
 11 responsive, non-privileged documents located after a reasonably diligent search: APL-
 12 GAELG_00001143, APL-GAELG_00001176, APL-GAELG_00001166, APL-
 13 GAELG_00001144, APL-GAELG_00001513, APL-GAELG_00001548, APL-
 14 GAELG_00001538, and APL-GAELG_00001516. Defendant will produce a categorical privilege
 15 log.

16 **REQUEST FOR PRODUCTION NO. 14:**

17 Any email discussion, meeting notes, or other documents between Plaintiff's management
 18 chain, Human Resources, Employee Relations, or Global Security that involved planning whether
 19 or not they would terminate Plaintiff, and how they would terminate Plaintiff dated from Jan. 1
 20 2021 through Sept. 10 2021.

21 **RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

22 Defendant objects to this Request to the extent it seeks information protected from
 23 disclosure by the attorney-client privilege and/or attorney work product doctrine.

24 Subject to and without waiving the forgoing objections, Defendant has already produced all
 25 responsive, non-privileged documents located after a reasonably diligent search: APL-
 26 GAELG_00001513, APL-GAELG_00001548, APL-GAELG_00001538, and APL-
 27 GAELG_00001516. Defendant will produce a categorical privilege log.

28

REQUEST FOR PRODUCTION NO. 15:

Any documents, contracts, or agreements that Plaintiff supposedly signed, accepted, or otherwise responded to related to the “Gobbler”/“Glimmer” app between Jan. 1 2016 and Sept. 10 2021. This includes any Informed Consent Forms and/or NDAs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Defendant objects to this Request to the extent it seeks disclosure of confidential and proprietary Apple product information.

Subject to and without waiving the forgoing objections, Defendant will produce all responsive documents located after a reasonably diligent search subject to appropriate protections.

REQUEST FOR PRODUCTION NO. 16:

Any emails or other documents, in possession of her management chain (David Powers, Dan West, Yannick Bertolus, John Ternus, Tim Cook) or Human Resources/Employee Relations (Helen Polkes and her management chain, Waibel and Okpo and their management chain) discussing the Aug. 31 2021 “Apple Cares About Privacy, Unless you Work at Apple,” Verge article, dated from Aug. 20 2021 through Sept. 10 2021.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Defendant objects to this Request to the extent it seeks information protected from disclosure by the attorney-client privilege and/or attorney work product doctrine. Defendant objects to this Request as overbroad because it seeks documents from custodians who were not involved in the decision to terminate Plaintiff’s employment. For that reason, Defendant also objects to this Request on the grounds that it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the forgoing objections, Defendant limits this Request to custodians that were involved in the decision to terminate Plaintiff’s employment (who Defendant has already identified for Plaintiff), including Yannick Bertolus, Megan Bowman, Aleks Kagramanov, Ekelemchi Okpo, Joni Reicher, Jennifer Waldo, and Adelmise Warner. Defendant will produce responsive, non-privileged documents located after a reasonably diligent search as

they are kept in the ordinary course of business on a rolling basis. Defendant will produce a categorical privilege log.

REQUEST FOR PRODUCTION NO. 17:

Any responses transmitted from Apple to The Verge and/or the reporter Zoe Schiffer, about the Apple Cares About Privacy, Unless you Work at Apple,” Verge article, in response to the reporter’s request for comment prior to publication. (Including any responses after publication, through Sept. 10 2021).

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Defendant understands this Request to seek communications from Defendant’s PR team to The Verge and/or Zoe Schiffer. Defendant does not have any documents that are responsive to this Request.

REQUEST FOR PRODUCTION NO. 18:

Whatever email or emails that Orrick referred to in their U.S. Dept. of Labor response in 2022, that were dated at or around July 20 2021, that Orrick says includes comments from Plaintiff about a medical leave or administrative leave.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Defendant has already produced the responsive documents: APL-GAELG_00001451 and APL-GAELG_00001053.

Dated: November 29, 2024

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Melinda S. Riechert
MELINDA S. RIECHERT
Attorney for Defendant
APPLE INC.

RE: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Production, Set 1

From Riechert, Melinda <mriechert@orrick.com>

To legal@ashleygjovik.com

CC Mantoan, Kathryn G. <kmantoan@orrick.com>, Perry, Jessica R. <jperry@orrick.com>, Booms, Ryan <rbooms@orrick.com>, Juvinall, Kate <kjuvinall@orrick.com>

Date Wednesday, June 19th, 2024 at 8:45 PM

We objected to that list for the reasons stated in our objections. If there are specific documents you think are missing, let us what they are and which request you think they are responsive to.

“Apple’s response” refers to Apple’s response to your complaints.

Melinda Riechert

Partner

Orrick

Silicon Valley 

T 650/614-7423

M 6507591929

mriechert@orrick.com



From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>

Sent: Wednesday, June 19, 2024 5:38 PM

To: Riechert, Melinda <mriechert@orrick.com>

Cc: Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>

Subject: RE: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Production, Set 1

[EXTERNAL]

Hello,

I already provided the list of documents I am requesting. That list is in the request for production I filed May 15 2024.

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Wednesday, June 19th, 2024 at 8:22 PM, Riechert, Melinda <mriechert@orrick.com> wrote:

Again we disagree. We are required to produce documents even if you already have them. We have produced the documents Apple relied on to terminate your employment. We have produced the personnel file. If there are specific documents you want that you did not receive in the 1549 pages of documents we produced, you should send document requests asking specifically for those documents.

Melinda Riechert

Partner

Orrick

Silicon Valley 

T 650/614-7423
M 650/759-1929
mrieichert@orrick.com



From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>

Sent: Wednesday, June 19, 2024 5:14 PM

To: Riechert, Melinda <mrieichert@orrick.com>

Cc: Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>;

Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>

Subject: RE: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Production, Set 1

[EXTERNAL]

Hello,

I will be filing the motion to compel, will provide Apple's response, and note that Apple has said it will not meet/confer further until the Motion to Dismiss is decided upon.

Please note - I disagree with your summary of documents provided to me thus far. As noted previously, the majority of documents provided were documents I already had in my possession (such as email I sent or received, or HR paperwork I filled out).

Further, the documents provided are not all documents in Apple's possession related to my complaints, or my personnel file (the ER investigation records etc.; and Apple is still holding back NDAs and other documents requested), nor has Apple provided a single document "supporting the decision to terminate my employment." I am not certain what you mean when you say "Apple's response" but I am certain there are far more documents than the ~10 you shared with me that mostly only span from March-May 2021, and almost no documents from July-Sept, and none of which include EH&S deliberations between April-September.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Wednesday, June 19th, 2024 at 7:59 PM, Riechert, Melinda <mrieichert@orrick.com> wrote:

Ashley,

We disagree with your email, including that Apple has violated the Court's order to participate in discovery and that Apple's responses are in bad faith or otherwise inappropriate.

While Judge DeMaio has declined to rule on Apple's motion to stay discovery pending a ruling on the motion to amend, we disagree that means Apple must produce all documents you seek in RFP Set One. Indeed, even though it is Apple's position that there are no claims at issue given the pending motion to dismiss, given the Court's request that the parties cooperate and as a showing of good faith, Apple produced 1,549 pages of documents showing the complaints you made to Apple during your employment beginning in March 2021, Apple's response, documents supporting the decision to terminate your employment, your personnel file, etc. These documents are responsive to your August 29, 2021 complaint and the December 10, 2021 case summary, which are the operative complaints while your motion to amend is under review.

Once there is certainty about the pleadings, Apple can better determine what additional documents are relevant and proportional to the needs to the case, and we can further meet and confer at that time.

Thank you,

Melinda Riechert

Partner

Orrick

Silicon Valley 

T 650/614-7423

M 6507591929

mriechert@orrick.com



From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>

Sent: Wednesday, June 19, 2024 4:14 PM

To: Riechert, Melinda <mrieichert@orrick.com>

Cc: Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>;
Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>

Subject: RE: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Production, Set 1

[EXTERNAL]

Hello,

I have not received a response.

Please provide an update or I will proceed with filing the motion to compel.

-Ashley

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Friday, June 14th, 2024 at 9:38 PM, Ashley M. Gjovik (Legal Matters)

<legal@ashleygjovik.com> wrote:

Hello,

Thank you for the meet/confer on this.

Because each of Apple's objections to each of my requests appears to include mostly the exact same content (copy/paste), please consider the concerns noted to apply to requests 1-61.

A) Court Order

Specific to:

"Respondent is unable to determine what nonprivileged matters are "relevant" to any claims or defenses that will proceed in this matter given the Court's May 23, 2024 Order. At this time, it is unclear what (if any) claims, and thus what defenses, will proceed and thus it is impossible to determine what matters would be "relevant to any party's claim or defense." If Complainant's Motion to Amend is denied and Respondent's Motion to Dismiss is granted, for example, there would be no claims before this Court and no discovery would be proper". - Apple's response

the response violates the court's order:

*"the litigation schedule as set out in the Notice of Hearing issued on March 27, 2024, **has not changed**. Until the Motion to Stay Discovery has been ruled upon, parties are expected to cooperate with each other in the discovery process. Judge DeMaio declines Respondent's request for a conference call at this time.... Respondent will supplement this Response pursuant to 29 C.F.R. § 18.53, if appropriate, following resolution of which claims, if any, are properly before this Court. Discovery is ongoing, and Respondent reserves the right to amend and/or supplement this response." - DOL OALJ*

Apple is currently expected to respond to my discovery requests under the CERCLA claim, regardless of their motion to dismiss. As already noted, I have not requested anything related to 3250 Scott yet, and am waiting for the motion to amend to be ruled upon.

B) Vague, Overbroad, Unduly Burdensome, Not Proportional

Respondent objects to this Request on the grounds that “[term]” and “[term]” lacks particularity and is overbroad, unduly burdensome, and not proportional to the needs of the case. -Apple

This is a boilerplate objection. Blanket, unsupported objections that a discovery request is “vague, overly broad, or unduly burdensome” are, by themselves, meaningless. A party objecting on these bases must explain the specific and particular ways in which a request is vague, overly broad, or unduly burdensome.

The “vague, ambiguous or confusing” objection. Here again, absent more, this “objection” is useless. The party objecting on these grounds “must explain the specific and particular way in which a request is vague.” Heller, 303 F.R.D. at 491 (quoting Consumer Elec. Ass’n. v. Compras & Buys Magazine, Inc., 2008 WL 4327253, at 2 (S.D. Fla. Sep. 18, 2008)). Heller v. City of Dallas, 303 F.R.D. 466, 491 (N.D. Tex. 2014)

The “overly broad and unduly burdensome” objection. See Fischer v. Forrest, 2017 WL 773694 (S.D.N.Y. Feb. 28, 2017) at *3 (“[S]tating that the requests are ‘overly broad and unduly burdensome’ is meaningless boilerplate. Why is it burdensome? How is it overly broad? This language tells the Court nothing.”); Heller v. City of Dallas, 303 F.R.D. 466, (N.D. Tex. 2014) at 490-91 (“the party resisting discovery [must] show how the requested discovery was overly broad, unduly burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden”).

“‘reasonably’ implies a requirement such categories be reasonably particularized from the standpoint of the party who is subjected to the burden of producing the materials. Any other interpretation places too great a burden on the party on whom the demand is made.” When faced with this objection, the meet and confer process should be utilized to provide responding party with an understanding of what

documents the demand is seeking and, if necessary, narrow the scope of the specific category. Calcor Space Facility, Inc. v. Superior Court (1997) 53 CA4th 216

C) Not Relevant / Admissible Evidence

Respondent objects to this Request on the grounds that it seeks information not relevant nor reasonably calculated to lead to the discovery of admissible evidence. -Apple

§ 18.401 Definition of relevant evidence. Relevant evidence means evidence having **any** tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

An objection that a discovery request is not relevant must include a specific explanation describing why the request lacks relevance and/or why the requested discovery is disproportionate in light of the factors enumerated in Federal Rule of Civil Procedure. Further, Federal Rules provide that information within this scope of discovery “need not be admissible in evidence” to be discoverable.

D) Burden/Expense

Respondent objects to this Request to the extent that the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case the amount in controversy, the parties resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. -Apple

Objections that requests are “overly broad and unduly burdensome” are “meaningless boilerplate” because that “language tells the Court nothing.” Fischer v. Forrest, 2017 U.S. Dist. LEXIS 28102 (S.D.N.Y. Feb. 28, 2017),

Apple takes in \$383B annual revenue. It's hard to believe Apple would be burdened by these requests due to Apple's "resources."

E) Privilege

Respondent objects to this Request to the extent it calls for information protected from disclosure by the attorney-client privilege, attorney work-product doctrine, or any other applicable privileges. -Apple

Objections based upon privilege must identify the specific nature of the privilege being asserted, as well as identify such things as the nature and subject matter of the communication at issue, the sender and receiver of the communication and their relationship to each other, among others.

You need to tell me what material there is that is being withheld under any of these privileges, and which privilege you contend applies, so I may seek the assistance of the Court in resolving your claims of privilege.

§ 18.51 (e) Claiming privilege or protecting hearing-preparation materials—(1) Information withheld. When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as hearing-preparation material, the party must:

(i) Expressly make the claim; and

(ii) Describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.

“The existence of the privilege and the applicability of any exception to the privilege is a question of fact for the judge. The burden of proving that the attorney-client privilege applies to a communication rests on the party asserting the privilege. This burden extends not only to a showing of the existence of the attorney-client relationship but to all other elements involved in the determination of the existence of the privilege, including (1) the communications were received from a client during the course of the client’s search for legal advice from the attorney in his or her capacity as such; (2) the communications were made in confidence; and (3) the privilege as to these communications has not been

waived.” Commissioner of Revenue v. Comcast Corp., 453 Mass. 293, 303 (2009). Before asserting the privileges or stating the documents don’t exist, counsel needs to review the documents (“diligent search”) and speak to their client (“reasonable inquiry”) to determine whether or not the privileges are applicable. See Scottsdale Ins. Co v. Superior Court (1997) 59 CA4th 263 Footnote 5.

Attorney client privilege is narrowly construed and not self-executing. Matter of the Reorganization of Elec. Mut. Liab. Ins. Co. (Bermuda), 425 Mass. 419, 421 (1997). See Attorney Gen. v. Facebook, Inc., 487 Mass. 109, 122 (2021); District Attorney for the Plymouth Dist. v. Board of Selectmen of Middleborough, 395 Mass. 629, 633–634 (1985).

Privileged material is already excluded from the scope of discovery under Civil Rule 26(b)(1) and a generic assertion of privilege is, in and of itself, useless under Civil Rule 26(b)(5)(A)(ii). See Schultz v. Sentinel Ins. Co., Ltd., 2016 WL 3149686, at*7 (D. S.D. Jun. 3, 2016) (“boilerplate ‘general objections’ fail to preserve any valid objection at all because they are not specific to a particular discovery request and they fail to identify a specific privilege or to describe the information withheld pursuant to the privilege”); Liguria Foods, 2017 WL 976626, at *11 (failure to provide privilege log renders privilege objections ineffective).

To assert a privilege or work product protection, a party must create a privilege log that identifies each document or communication being withheld, along with the basis for the claim. Mass. R. Civ. P. 26(b)(5). see also, C.C.P. §2031.240

“Simply mentioning a general category of privilege, without any further elaboration or any specific linkage with the documents does not satisfy the burden.” (Kamakana v. City and County of Honolulu (9th Cir. 2006) 447 F.3d 1172, 1184.)

F) Privacy Rights of Third Parties

Respondent objects to this Request to the extent it seeks information protected from disclosure by the privacy rights of third parties. -Apple

The right of privacy is protected by Article I, Section 1 of the California Constitution and the U.S. Constitution [Griswold v. State of Connecticut (1965) 381 US 479] However, the protection is not

absolute. In each case, the court would carefully balance the interests involved—the claim of privacy vs. the public interest in obtaining just results in litigation. See California Civil Discovery Practice, 4th Edition, (CEB 2019) §3.157A citing Williamson v. Superior Court (1978) 21 Cal3d 829, 835; Hill v. National Collegiate Athletic Ass'n (1994) 7 C4th 1, 15; and Binder v. Superior Court (1987) 196 CA3d 893, 901 for the test that the court will use. Also, the court most likely will take the documents in camera for a determination. See California Practice Guide: Civil Procedure Before Trial (TRG 2019) §8:322 citing Schnabel v. Superior Court (Schnabel) (1993) 5 C4th 704, 714.

"Even when Sefic offered to accept redacted materials however, the company nevertheless consistently failed to produce any documents in response. When objection is made only to part of an item, the objecting party

should specifically identify that part, and make production of the remainder of the document; Marconi's response to the motion instead continued to assert the same blunderbuss objection without acknowledgment of Sefic's offer to accept redacted documents and without reference to legal authority in support of its position." SEFIC v Marconi Wireless, US DOJ, Office of Chief Administrative Hearing officer, OCAHO Case No. 06B000 (2007).

G) Trade Secret, Proprietary, Confidential

Respondent objects to this Request to the extent it seeks disclosure of confidential, trade secret, or proprietary business information. -Apple

Which records do you contend are proprietary and confidential and why? You must at least tell me if any responsive materials exist, so that I may seek the assistance of the Court in resolving your objection.

Trade secrets are already protected from disclosure through the IPA & NDAs I already signed. Trade secrets and other truly confidential information can also be redacted.

The mere fact that documents are proprietary is not necessarily justification for confidentiality. For example, a federal court in Kentucky rejected Home Depot's argument that its training manuals and standard operating procedures should be protected. (Mitchell v. Home Depot U.S.A. (W.D. Ky. Jun. 14, 2012) No. 3:11-CV-332, 2012 WL 2192279, *5.)

"Courts are generally unwilling to seal business information where the parties fail to explain why the specific, urgent need for confidentiality overrides the public's right of access, or where the business records are outdated or limited in scope" Tourangeau v. Nappi Distribs., 2:20-cv-00012-JAW, 14 (D. Me. Mar. 14, 2022)

H) Overbroad

Respondent objects to this Request because it is overbroad as to time. -Apple

If there is an objection based upon an unduly broad scope, such as time frame or geographic location, discovery should be provided as to those matters within the scope that are not disputed.

Generalized objections to an opponent's discovery requests are insufficient. See, e.g., Mancia v. Mayflower Textile Servs. Co., 253 F.R.D. 354, 358 (D. Md. 2008) (" Boilerplate objections that a request for discovery is overbroad and unduly burdensome . . . are improper unless based on particularized facts.") (citations and quotation marks omitted); Walker v. Lakewood Condo. Owners Ass'n, 186 F.R.D. 584, 587 (C.D. Cal. 1999) (" Boilerplate, generalized objections are inadequate and tantamount to not making any objection at all.") Autoridad de Carreteras y Transportacion v. Transcore Atl., Inc., 319 F.R.D. 422, 427 (D.P.R. 2016)

"if an item were overbroad — I find that no item is overbroad — that fact would be no excuse for he failure to produce those responsive documents that do concern the subject matter of the adversary proceeding and would fall within the scope of a properly limited request." In re E.J. Sciaba Contracting Company, Inc., Case No. 03-20344-RS, Adversary Proceeding No. 04-1357, 4 (Bankr. D. Mass. Jan. 17, 2006)

I) Boilerplate Responses

Judge Bennett observes that no judicial jurisdiction in the United States "authorizes, condones, or approves of this practice[.]" According to Judge Bennett, boilerplate objections are "obstructionist" and this obstructionist discovery practice is a firmly entrenched "culture" in some parts of the country,

notwithstanding that it involves practices that are contrary to the rulings of every federal and state court to address them. *Liguria Foods, Inc. v. Griffith Labs, Inc.*, 2017 U.S. Dist. LEXIS 35370 (N.D. Iowa Mar. 13, 2017)

Cafaro v. Zois, 2016 WL 903307, at *1 (S.D. Fla. Mar. 9, 2016) (“Boilerplate objections may also border on a frivolous response to discovery requests”).

Heller v. City of Dallas, 303 F.R.D. 466, 482-85 (N.D. Tex. 2014) (“Counsel should cease and desist from raising these free-standing and purportedly universally applicable ‘general objections’ in responding to discovery requests.”);

Boilerplate general objections are sanctionable in California per *Korea Data Systems Co. Ltd. v. Superior Court* (1997) 51 Cal.App.4th 1513 and may result in waivers of privilege per *Burlington Northern & Santa Fe Ry Co. v. U.S. Dist. Court* 408 F.3d 1142, 2005 WL 1175 922 (9th Cir.2005) [trial court affirmed in holding boilerplate objection without identification of documents is not the proper assertion of a privilege.]

J) Supplement Response

Objections that reserve the “right” to supplement responses. Parties are required to supplement their responses under Civil Rule 26(e)(1). This “objection” is pointless. See *Heller*, 303 F.R.D. at 484.

K) Partial Responses

§ 18.61 (b)(2)(iii) Objections. An objection to part of a request must specify the part and permit inspection of the rest.

L) Truthfulness

Counsel must be careful not to assert objections to requests for production of documents (such as through boilerplate objections) that do not exist or not in the attorney or party's possession, custody or control. Such a response violates an attorney's ethical duty under Bus & Prof Code §6068(d) to act truthfully and, therefore, constitutes bad faith. See *Bihun v. AT&T Info. Sys.* (1993) 13 CA4th 976, 991. The point of *Bihun* is that by asserting a privilege to a document the attorney impliedly represents that the responding attorney has reviewed the document and contends that the privilege applies; if the document does not exist or is not in the possession of the attorney, those implied representations are made in bad faith.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Friday, June 14th, 2024 at 7:53 PM, Riechert, Melinda <mrrieichert@orrick.com> wrote:

Ashley

We disagree that our discovery responses are in bad faith, that we have violated the court's order to participate in discovery, and that our objections are not well taken. Nevertheless, we are willing to meet and confer regarding your concerns. Please

send us a list of your specific concerns about each of our responses and we will provide you with our response to them.

Melinda Riechert

Partner

Orrick

Silicon Valley 

T 650/614-7423

M 6507591929

mrieichert@orrick.com



From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>

Sent: Friday, June 14, 2024 4:42 PM

To: Riechert, Melinda <mrieichert@orrick.com>

Cc: Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R.

<jperry@orrick.com>; Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate

<kjuvinall@orrick.com>

Subject: RE: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Production, Set 1

[EXTERNAL]

Hello,

The discovery response send today is clearly sent in bad faith and I believe it directly violates the courts order that Apple participate in discovery and cooperate with my requests.

The documents actually shared today appear to be just resending all of the documents Apple previously sent me in the fake civil discovery.

The objections to overbroad or vague terms, even if true, are also in bad faith because I volunteered numerous times to help clarify and narrow, and Apple never bothered to engage in that process.

I will be filing a § 18.57 motion to compel - probably Monday after I submit the amended civil complaint. If Apple would like to avoid the motion to compel, I'm happy not to file it if Apple will actually cooperate and produce documents by the deadline already in place.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Thursday, June 13th, 2024 at 6:17 PM, Ashley M. Gjovik (Legal Matters)

<legal@ashleygjovik.com> wrote:

Thank you!

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Thursday, June 13th, 2024 at 6:15 PM, Riechert, Melinda
<mriechert@orrick.com> wrote:

Ashley,

Apple will timely respond to your Requests for Production, Set One.

Thank you

Melinda Riechert

Partner

[Orrick](#)

Silicon Valley 

T 650/614-7423

M 6507591929

mriechert@orrick.com

From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>
Sent: Thursday, June 13, 2024 12:04 PM
To: Riechert, Melinda <mrrechert@orrick.com>
Cc: Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>
Subject: RE: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Production, Set 1

[EXTERNAL]

Hello,

I never saw a response to this message, or the message from DOL OALJ about my pending request for production / discovery.

I sent you my request on 5/15. 30 days after 5/15, starting 5/16, would be 6/15 (pushing to Monday 6/17) for the deadline.

I just wanted to check in and ensure you're still working towards that deadline and plan to respond to the request on time?

Again, let me know if you have any questions, or if there's anything I can do to clarify requests.

Thank you,

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Wednesday, June 5th, 2024 at 3:11 PM, Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com> wrote:

Hello!

I've never done discovery before so maybe this is a weird offer, but I do want to make things easier on Apple if I can -- and I know my request included some stuff that will probably include content Apple may consider 'confidential.' I believe the NDAs and IPA I signed prior would cover my responsibilities with that kind of information, however, if it would be less effort for Apple, I'd be open to visiting some Apple location or Orrick office around here where I could directly review the more sensitive documents (ie that include content about unreleased new customer products, budgets, etc) and then if there's specific documents I decide I need copies of, then I can ask for those specifically.

I assume you'll want to do this sort of thing for the security camera footage too. I'm okay with watching it on site, or over a screenshare, and then designating which sections (start/end) I would like copies of, and I don't expect those EHS-related sections to contain anything terribly confidential.

Let me know what Apple would prefer and the easiest way for me to get access to the relevant records, but not over burden Apple with any confidentiality concerns.

Thanks!

-Ashley

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Wednesday, May 29th, 2024 at 8:54 PM, Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com> wrote:

Hello,

As mentioned several times in email, and in the NLRB charge, General Order 71 does not apply to our civil lawsuit.

For the US DOL OALJ case, Apple filed a motion to stay on May 22nd and it was accepted to the docket.

The next day, on May 23rd, in an order dated May 23rd, Judge DeMaio wrote that "**all other pending matters** before the court in this matter" "will be held in **abeyance until** Complainant's Motion to Amend has been **fully ruled on**."

Your motion to stay is a "other pending matter" as it is a ***matter***, and it is ***pending***.

Please provide me more detail on what definitions you disagree with. Do you not view the motion to stay as ***pending***? and/or you do not see it as a ***matter***?

Judge DeMaio also wrote that "Any **changes** to the litigation **schedule** can be addressed **after** any amended Complaint is submitted and **responded to.**"

The March 27 2024 Order from Judge DeMaio started discovery under § 18.50 ("any party may seek discovery at any time after a judge issues an initial notice or order..."), and the schedule in Judge DeMaio's Order is still in effect, and your motion to stay is requesting a **change** to the litigation **schedule** (to stop/pause/delay already scheduled and initiated discovery).

The other events in the "litigation schedule" per the 3/27 Order would be the end of discovery, the prehearing statement, preparation of exhibits, and the trial. But neither of us have filed a request to modify the *schedule* of any of these things. The only event in the "**litigation schedule**" that one of us has requested to *change* the *schedule* of is the start of discovery (requested by Apple).

Please provide more detail on why you believe this does not apply to Apple. Do you not believe starting/stopping a phase of litigation is a change to the "**schedule**"? Do you question whether staying/pausing a phase of litigation is a "**change**" from the original plan?

Full quote: "the Court will allow Complainant to submit proposed amendments t....Furthermore, all other pending motions before the Court in this matter, including Respondent's Motion to Dismiss and Motion for Judicial Notice, will be held in abeyance until Complainant's Motion to Amend has been fully ruled on. Any changes to the litigation schedule can be addressed after any amended Complaint is submitted and responded to." (5/23/24 Order)

If you feel confident in your prior assessment, I suggest we email the OALJ staff and ask them to confirm your interpretation of the Judge's terminology. They have been very responsive and it would save us all time to ask them directly.

-Ashley

—
Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Wednesday, May 29th, 2024 at 8:29 PM, Riechert, Melinda
<mr riechert@orrick.com> wrote:

Ashley,

We disagree that Apple's motion to stay discovery is no longer at issue; it is still properly before the ALJ.

Additionally, the ND Cal case and the OALJ case are two separate cases with separate issues. If you would like to engage in a meet and confer about Apple's GO71 production in the ND Cal case, we are happy to do that.

As for the OALJ case, any discussion about Apple's document production is premature because Apple has not yet produced any documents. We can address any concerns you have after Apple has produced responsive documents and you have had a chance to review them.

Thank you,

Melinda Riechert

Partner

Orrick

Silicon Valley 

T 650/614-7423

M 6507591929

mrieichert@orrick.com

From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>

Sent: Tuesday, May 28, 2024 7:55 AM

To: Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Riechert, Melinda <mrieichert@orrick.com>; Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>

Subject: Re: Ashley Gjovik v Apple Inc 2024-CER-00001 Request for Proudution, Set 1

[EXTERNAL]

Hello Apple's lawyers,

I just wanted to close the loop on our prior email from last week. Last week I said I planned to file an opposition to your motion to stay discovery, however, per Judge DeMario's May 23rd order (quoted below), its my understanding that he is

not considering your motion to stay, and any changes to his prior order (that already started discovery) will not be made until after he decides on the amended complaint.

"....Furthermore, all other pending motions before the Court in this matter, including Respondent's Motion to Dismiss and Motion for Judicial Notice, will be held in abeyance until Complainant's Motion to Amend has been fully ruled on. Any changes to the litigation schedule can be addressed after any amended Complaint is submitted and responded to." (5/23/24 Order)

Thus, I will not be filing an opposition because your 30 day deadline from 5/15 for this request is still in place -- instead I will file a short notice about this when I file the amended complaint.

I also wanted to sync on redactions. You already tried to start discovery in the civil case (which I still object to), and after reviewing the documents you voluntarily shared with me, I want to express my concerns about some of the redactions. A few examples are below. These are just some examples - all of the documents should be reviewed:

- APL-GAELG_00001248 | There are two large redactions labeled as "Attorney Client Privilege" however neither Polkes (HR) or Waibel (ER) are attorneys so ACP is not applicable
- APL-GAELG_00001285 | First names are redacted on several pages and the names are important context. (there are a bunch of docs with this issue)
- APL-GAELG_00001262 | The subject of a calendar invite between Polkes (HR) and Waibel (ER) is partially redacted despite it being about my safety concerns. This seems unjustified.
- APL-GAELG_00001254 | There is a 2-3 line redaction from an iMessage exchange between Polkes (HR) and Waibel (ER) labeled Attorney Client Privilege but there are no attorneys in the text message exchange.
- APL-GAELG_00001380 | An entire paragraph is redacted in an email from Waibel (ER) to Lagares (ER) about me.
- and so on

If it is more efficient for Apple, Apple does not need to generally re-send me documents it already sent in formal discovery for other jurisdictions - but for this first US DOL round, I do ask that Apple resend the documents it send prior in its

pseudo-civil-discovery so we have them established as formal discovery documents for authentication. Hopefully you can review and correct the prior redactions as needed prior to resending.

As noted in my request for production, I'm also asking for a redaction/privilege log. There are many redactions of text that simply say "redacted". If there's a standard way to classify Intellectual Property, Attorney-Client Privilege, etc. please us that, or if not we can agree on some terms for clarification. If you insist on redacting all email addresses and phone numbers, I ask that you notate that its an email address or phone number in the redaction. I'm willing to compromise on project code names and you can use a term like "project code name" or "NPS" or something, but its not IP. I'd also prefer the reason for redaction be noted on the document's redaction and also included in a log (like the US gov does with FOIA), but at least having it in a log will help.

Thanks,

-Ashley

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Wednesday, May 15th, 2024 at 9:03 PM, Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com> wrote:

Hello Apple's lawyers,

Attached is my first request for production from Apple for the US Dept. of Labor OALJ CERCLA case.

I look forward to a response within 30 days, as required by law.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

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EXHIBIT B

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)
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Facsimile: +1 415 773 5759

Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S INITIAL
DISCOVERY UNDER GENERAL
ORDER 71**

1 KATE E. JUVINALL (SBN 315659)
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13 Telephone: +1 202 339 8400
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15 Attorneys for Defendant
16 Apple Inc.
17
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19
20
21
22
23
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28

1 Defendant Apple Inc. responds to Northern District of California General Order No. 71:
2 Initial Discovery Protocols For Employment Cases Alleging Adverse Action (“Gender Order 71”)
3 as follows:

4 Defendant provides these responses based on the information and documents currently
5 available to it, given that discovery in this action is ongoing. Nothing contained in these responses
6 shall in any way limit Defendant’s ability to make all uses at trial or otherwise of the information
7 or documents referenced herein or of any information, documents or other evidence that may be
8 discovered in the future. Defendant has made its best effort to respond accurately to each category,
9 but reserves the right to amend its objections and responses upon completion of its search for
10 responsive documents.

11 Defendant objects to each and every category to the extent that it seeks information
12 protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other
13 applicable privilege. If supplying any of the requested documents would result in waiving any
14 applicable privilege or objection based on any such privilege, Defendant objects to providing the
15 documents and will not do so. If Defendant inadvertently produces any documents falling within
16 any applicable privilege, Defendant does not intend to waive the applicable privilege.

17 Defendant objects to each and every category to the extent that it seeks documents and/or
18 information that is protected from disclosure by the rights of privacy of third-party non-litigants.

19 Defendant objects to each and every category to the extent that it seeks electronically stored
20 information (“ESI”) from sources that are not reasonably accessible because of undue burden and
21 expense. To the extent that any categories call for ESI from sources that are not reasonably
22 accessible without undue burden or cost within the meaning Federal Rule of Civil Procedure
23 26(b)(2)(B), or for which the burden or cost of retrieval and review would not be proportional to
24 the needs of the case (including where the burden or expense would outweighs its likely benefit),
25 Defendant will not supply or render such ESI.

26 Subject to and without waiving any of the above objections, and incorporating each of them
27 by this reference into each response below, Defendant responds to General Order 71 as follows:

28 ///

1 **1. Production of Documents By Defendant**

2 Category A:

3 All communications concerning the factual allegations or claims at issue in this lawsuit
4 among or between: (i) The plaintiff and the defendant; (ii) The plaintiff's manager(s), and/or
5 supervisor(s), and/or the defendant's human resources representative(s).

6 Response to Category A:

7 Subject to the preliminary statement and foregoing objections set forth above, Defendant
8 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
9 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
10 After a diligent search and reasonable inquiry Defendant will produce, pursuant to a protective
11 order regarding the treatment of confidential information ("the Confidentiality Order"), non-
12 privileged communications concerning Plaintiff and the factual allegations or claims at issue in this
13 lawsuit directly related to her alleged wrongful termination, between Plaintiff and Yannick
14 Bertolus, Aleks Kagramanov, Ekelemchi Okpo, Dave Powers, Michael Steiger, Jenna Waibel,
15 and/or Dan West from March 1, 2021 to September 9, 2021. After a diligent search and reasonable
16 inquiry Defendant will also produce non-privileged correspondence concerning Plaintiff and the
17 factual allegations or claims at issue in this lawsuit directly related to her alleged wrongful
18 termination, between or among Yannick Bertolus, Aleks Kagramanov, Ekelemchi Okpo, Dave
19 Powers, Michael Steiger, Jenna Waibel, and/or Dan West from March 1, 2021 to September 9,
20 2021.

21 Category B:

22 Responses to claims, lawsuits, administrative charges, and complaints by the plaintiff that
23 rely upon any of the same factual allegations or claims as those at issue in this lawsuit.

24 Response to Category B:

25 Subject to the preliminary statement and foregoing objections set forth above, Defendant
26 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
27 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
28 The only complaints made by Plaintiff of which Defendant is aware that may be related to her

wrongful termination claims in this lawsuit are certain administrative charges she filed with the National Labor Relations Board (“NLRB”) and with the United States Department of Labor (“DOL”). Defendant will not be producing its responses to the NLRB Charges because the NLRB cases are still open, and as a result the responses are not available to Plaintiff nor are they subject to a FOIA request. See NLRB Freedom of Information Act Manual, <https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/march2008foiamanual.pdf>, at 87 (stating that “[t]he FOIA is not intended to function as a private discovery tool,” and citing *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) and *Coastal States Gas Corp. v. U.S. Dep’t of Energy*, 644 F.2d 969, 982 (3d Cir. 1981)). As for Plaintiff’s case before the DOL, to the extent that any factual allegations overlap, Defendant will not be producing its response because on December 8, 2023, the DOL issued a finding of no cause on Plaintiff’s claims, and Plaintiff communicated to Defendant that same day her intent to appeal. As of the date of this filing, Plaintiff’s time to appeal the DOL Secretary’s Findings has not yet run.

Category C:

Documents concerning the formation and termination, if any, of the employment relationship at issue in this lawsuit, irrespective of the relevant time period.

Response to Category C:

Subject to the preliminary statement and foregoing objections set forth above, Defendant responds: After a diligent search and reasonable inquiry, Defendant will produce Plaintiff’s personnel file, which includes her offer letter and termination letter.

Category D:

The plaintiff’s personnel file, in any form, maintained by the defendant, including files concerning the plaintiff maintained by the plaintiff’s supervisor(s), manager(s), or the defendant’s human resources representative(s), irrespective of the relevant time period.

Response to Category D:

Subject to the preliminary statement and foregoing objections set forth above, Defendant responds: After a diligent search and reasonable inquiry, Defendant will produce Plaintiff’s personnel file. No other files identified in Category D exist.

1 Category E:

2 The plaintiff's performance evaluations and formal discipline.

3 Response to Category E:

4 Subject to the preliminary statement and foregoing objections set forth above, Defendant
5 responds: After a diligent search and reasonable inquiry Defendant will produce, pursuant to a
6 Confidentiality Order, Plaintiff's performance reviews. Defendant will also produce the
7 termination letter related to Plaintiff.

8 Category F:

9 Documents relied upon to make the employment decision(s) at issue in this lawsuit.

10 Response to Category F:

11 Subject to the preliminary statement and foregoing objections set forth above, Defendant
12 responds: After a diligent search and reasonable inquiry Defendant will produce, pursuant to a
13 Confidentiality Order, non-privileged documents relied on to make the decision to terminate
14 Plaintiff's employment.

15 Category G:

16 Workplace policies or guidelines relevant to the adverse action in effect at the time of the
17 adverse action. Depending upon the case, those may include policies or guidelines that address: (i)
18 Discipline; (ii) Termination of employment; (iii) Promotion; (iv) Discrimination; (v) Performance
19 reviews or evaluations; (vi) Misconduct; (vii) Retaliation; and (viii) Nature of the employment
20 relationship.

21 Response to Category G:

22 Subject to the preliminary statement and foregoing objections set forth above, Defendant
23 responds: After a diligent search and reasonable inquiry Defendant will produce policies relevant
24 to Plaintiff's alleged wrongful termination of employment (the only issues/claims not presently
25 subject to a pending motion to dismiss), including the Confidentiality and Intellectual Property
26 Agreement that Plaintiff signed, and relevant portions of Defendant's Business Conduct Policy and
27 EEO Policy. Defendant will produce its internal facing Misconduct and Discipline Policy pursuant
28 to a Confidentially Order.

1 Category H:

2 The table of contents and index of any employee handbook, code of conduct, or policies
3 and procedures manual in effect at the time of the adverse action.

4 Response to Category H:

5 Subject to the preliminary statement and foregoing objections set forth above, Defendant
6 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
7 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
8 After a diligent search and reasonable inquiry, Defendant will produce the table of contents of its
9 Business Conduct Policy effective October 2020, which was in effect at the time of the alleged
10 adverse action at issue in this lawsuit (Plaintiff's termination).

11 Category I:

12 Job description(s) for the position(s) that the plaintiff held.

13 Response to Category I:

14 Subject to the preliminary statement and foregoing objections set forth above, Defendant
15 responds: Defendant will produce job descriptions for the particular position(s) that Plaintiff held
16 if it is able to locate any after a diligent search and reasonable inquiry.

17 Category J:

18 Documents showing the plaintiff's compensation and benefits. Those normally include
19 retirement plan benefits, fringe benefits, employee benefit summary plan descriptions, and
20 summaries of compensation.

21 Response to Category J:

22 Subject to the preliminary statement and foregoing objections set forth above, Defendant
23 responds: After a diligent search and reasonable inquiry Defendant will produce, pursuant to a
24 Confidentiality Order, non-privileged documents showing Plaintiff's compensation and benefits
25 from during her employment with Defendant.

26 Category K:

27 Agreements between the plaintiff and the defendant to waive jury trial rights or to arbitrate
28 disputes.

1 Response to Category K:

2 Subject to the preliminary statement and foregoing objections set forth above, Defendant
3 responds: After a diligent search and reasonable inquiry, no responsive documents exist.

4 Category L:

5 Documents concerning investigation(s) of any complaint(s) about the plaintiff or made by
6 the plaintiff, if relevant to the plaintiff's factual allegations or claims at issue in this lawsuit and not
7 otherwise privileged.

8 Response to Category L:

9 Subject to the preliminary statement and foregoing objections set forth above, Defendant
10 responds: The only claims at issue in this lawsuit and not presently subject to a pending motion to
11 dismiss are those directly related to the alleged wrongful termination of Plaintiff's employment.
12 After a diligent search and reasonable inquiry, Defendant will produce, pursuant to a
13 Confidentiality Order, responsive, non-privileged, non-work-product documents that are directly
14 related to Plaintiff's alleged wrongful termination.

15 Category M:

16 Documents in the possession of the defendant and/or the defendant's agent(s) concerning
17 claims for unemployment benefits unless production is prohibited by applicable law.

18 Response to Category M:

19 Subject to the preliminary statement and foregoing objections set forth above, Defendant
20 responds: After a diligent search and reasonable inquiry, Defendant does not have any responsive
21 documents.

22 Category N:

23 Any other document(s) upon which the defendant relies to support the defenses, affirmative
24 defenses, and counterclaims, including any other document(s) describing the reasons for the
25 adverse action.

26 Response to Category N:

27 There is no operative answer on file. Defendant will produce non-privileged documents in
28 support of its defenses and affirmative defenses at the appropriate time after its answer is filed.

1 Defendant's investigation of Plaintiff's claims is ongoing and Defendant reserves the right to
 2 amend this response, to supplement documents produced in support of this response, and to rely on
 3 such information and documents as evidence in this action.

4 **2. Production of Information By Defendant**

5 Defendant has provided, to the best of its knowledge and ability at this time, complete and
 6 accurate information required by Rule 26(a)(1)(A) and General Order 71. As set forth below,
 7 Defendant reserves its right to supplement or delete from the responses below as more information
 8 is obtained through the discovery process.

9 Category A:

10 Identify the plaintiff's supervisor(s) and/or manager(s).

11 Response to Category A:

12 Linda Keshishoglou, Evan Buyze, and David Powers.

13 Category B:

14 Identify person(s) presently known to the defendant who were involved in making the
 15 decision to take the adverse action.

16 Response to Category B:

17 Defining "adverse action" as the termination of Plaintiff's employment, Yannick Bertolus
 18 made the decision to terminate Plaintiff's employment.

19 Category C:

20 Identify persons the defendant believes to have knowledge of the facts concerning the
 21 claims or defenses at issue in this lawsuit, and a brief description of that knowledge.

22 Response to Category C:

23 Defendant believes the following individuals are likely to have discoverable information
 24 relevant to facts regarding Plaintiff's claims for alleged wrongful termination of employment—the
 25 only issues/claims not presently subject to a pending motion to dismiss—as alleged with
 26 particularity in the pleadings:

- 27 1. Plaintiff (information regarding complaints to Defendant, and termination of
 28 Plaintiff's employment)

2. Yannick Bertolus (Hardware Engineering Vice President) (information regarding termination of Plaintiff's employment)
3. Aleks Kagramanov (Employee Relations Business Partner) (information regarding termination of Plaintiff's employment)
4. Ekelemchi Okpo (Employee Relations Business Partner) (information regarding complaints to Defendant and Defendant's policies)
5. David Powers (SW Development Engineer Director) (information regarding complaints to Defendant)
6. Michael Steiger (Environmental Health and Safety Manager) (information regarding complaints to Defendant and Defendant's policies)
7. Jenna Waibel (Employee Relations Business Partner) (information regarding complaints to Defendant and Defendant's policies)
8. Dan West (Hardware Development Engineer Senior Director) (information regarding complaints to Defendant)

Except for Plaintiff, all individuals identified above may only be contacted through Defendant's counsel. Following discovery and receipt of additional information regarding the nature of Plaintiff's claims, additional witnesses may be identified, and Defendant reserves the right to supplement this list accordingly.

Category D:

State whether the plaintiff has applied for disability benefits and/or social security disability benefits after the adverse action. State whether the defendant has provided information to any third party concerning the application(s). Identify any documents concerning any such application or any such information provided to a third party.

Response to Category D:

To Defendant's knowledge, Plaintiff has not applied for disability benefits or social security disability benefits. As a result, Defendant has not provided information to any third party concerning any such application.

1 Dated: December 18, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

2
3 By: /s/ Jessica R. Perry

4 JESSICA R. PERRY
Attorneys for Defendant
5 APPLE INC.
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From: Juvinall, Kate <kjuvinall@orrick.com>
Sent: Tuesday, December 19, 2023 1:29 PM
To: Ashley M. Gjovik (Legal Matters)
Cc: Booms, Ryan; Riechert, Melinda; Mantoan, Kathryn G.; Perry, Jessica R.; Mahoney, Brian; harry.johnson; kelcey.phillips@morganlewis.com; mark.stolzenburg@morganlewis.com; crystal.carey@morganlewis.com
Subject: RE: Gjovik v Apple | Requesting signed instruments under CLC § 432

Ashley,

As you know, the federal rules of civil procedure allow you to request these types of documents during discovery after the Rule 26(f) conference occurs.

We are not aware of any statute governing contracts that allows you to seek these types of documents outside of the formal discovery process. If you are referring to a specific statute, please send us the citation.

Best,
Kate

From: Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com>
Sent: Friday, December 15, 2023 3:09 PM
To: Juvinall, Kate <kjuvinall@orrick.com>
Cc: Booms, Ryan <rbooms@orrick.com>; Riechert, Melinda <mriechert@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Mahoney, Brian <brian.mahoney@morganlewis.com>; harry.johnson <harry.johnson@morganlewis.com>; kelcey.phillips@morganlewis.com; mark.stolzenburg@morganlewis.com; crystal.carey@morganlewis.com
Subject: RE: Gjovik v Apple | Requesting signed instruments under CLC § 432

[EXTERNAL]

FYI, I talked with two people at CalDOL DIR today about Section 432 and both said it applies to ex-employees of California employers. I'm now waiting for written confirmation from the California Labor Commissioner's Office.

—
Ashley M. Gjovik
BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Thursday, December 14th, 2023 at 8:06 PM, Ashley M. Gjovik (Legal Matters) <legal@ashleygjovik.com> wrote:

Thank you for the update. I received your email about Section 432. I find the legal analysis in the cases cited questionable, and neither of the two cases are controlling, so I will be researching the topic further. I also plan to call the CalDOL office to discuss it with them as well, so I will get back you later on my challenge.

I will also request a copy of the Face Gobbler ICF from Apple once more, now under contract law. Apple has cited that alleged Gobbler ICF in their defense, and claim it is evidence supporting their decision to terminate me. However, Apple has not provided me a copy of that document, and when I attempted to access that document prior to my termination, I could not -- the prior link said it no longer existed. If I was to sign such a thing, it assumably had

obligations that lasted longer than 1 year, and thus statute of frauds is implicated. If there is no proof of signed document, then there is no contract. Further, I will be arguing bad faith conduct by Apple, and further evidence of lack of consent and lack of mutual assent, if they continue to refuse to provide a copy of the document they claim is symbolic of my 'consent'. Finally, without providing me even confirmation the document does even exist still, I will also be treating the document as assumed to be non-existent in my amended complaint and opposition.

If my request is denied again, I will of course also be requesting the document in discovery.

Thanks,
-Ashley

—
Ashley M. Gjøvik
BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Thursday, December 14th, 2023 at 7:18 PM, Juvinall, Kate <kjuvinall@orrick.com> wrote:

Hi Ashley – confirming receipt of your email. We separately responded today regarding your LC section 432 request and will follow-up regarding your request under the CPRA.

Thank you,

Kate

From: Ashley M. Gjøvik (Legal Matters) <legal@ashleygjovik.com>
Sent: Friday, December 8, 2023 6:35 PM
Cc: Booms, Ryan <rbooms@orrick.com>; Riechert, Melinda <mrieichert@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>; Perry, Jessica R. <jperry@orrick.com>; Mahoney, Brian <brian.mahoney@morganlewis.com>; harry.johnson <harry.johnson@morganlewis.com>; kelcey.phillips@morganlewis.com; mark.stolzenburg@morganlewis.com; crystal.carey@morganlewis.com
Subject: RE: Gjøvik v Apple | Requesting signed instruments under CLC § 432

[EXTERNAL]

Removing OMM who confirmed they're no longer on this either

Hello,

Contracts

First, since Gobbler is the crux of Apple's legal defense in this matter, I'd think that the alleged Gobbler NDA would be easily on hand and it should only take a couple days at most to send over. Its been 10 days now. Please send or confirm it no longer exists.

CPRA

Second, the US DOL decision today (which I am appealing on both claims) appears to make direct reference to my personal information that was on my personal iPhone and personal iCloud account, including my discussions with non-employees on their iPhones and my personal iPhone, which must have been collected by Apple, and shared by Apple. Prior filings also reference my personal text messages (copied by Global Security) and my social media posts. All of this is personal information.

Considering this, under the CPRA, I am requesting copies of my personal information held by Apple including "where it came from, retention policies, and third-party disclosures." Among more standard types of data, personal information also includes "geolocation, biometrics, and internet activity" data. [see [Morgan Lewis article](#)]. This also includes but is not limited to: "information collected and analyzed concerning a consumer's health... and sex life." [see [Orrick article](#)].

If Apple would like to deny the request for certain types of data, please provide information on what exception they relied on to deny the request and for what category of data they applied it.

I also opt out of the sale or sharing of that data, automated decision making based on that data, and ask to limit the use/disclosure of that information.

That information includes, but is not limited to: *"The CPRA also grants employees a new right to limit use and disclosure of "sensitive personal information," which is defined to include (1) precise geolocation data, (2) racial or ethnic origin, (3) union membership, (4) the contents of certain employee email and text messages, and (5) biometric information."* [see [Morgan Lewis article](#)].

Finally, I reserve my right to also request a deletion of that data.

I am filing this request as an ex-Apple employee, but also as someone with an active business based in California who owns and uses Apple products, thus a standard 'consumer.'

A business cannot discriminate against a consumer because the consumer exercised any of the consumer's California rights, unless the price or service difference is reasonably related to the value provided to the business by the consumer's data. [see [Orrick article](#)].

Thank you.

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Sunday, December 3rd, 2023 at 11:08 PM, Ashley M. Gjøvik (Legal Matters) <legal@ashleygjovik.com> wrote:

Thank you for the update, MWE. Moving MWE to bcc.

Morgan Lewis - I now assume you are assigned to all five NLRB charges (including the two open cases).
You guys should fix up your notices of appearance - it still shows MWE on most of the NLRB case webpages.

If Morgan Lewis is not retained for some of the NLRB charges, please confirm, and let me know if I should ask Apple who is, or if Apple is handling them directly, or if you know who else is handling them if not you.

Thank you.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Saturday, December 2nd, 2023 at 5:17 PM, Foster, Christopher
<Cfoster@mwe.com> wrote:

MWE does not represent any party in these referenced matters.

Thank you,

Chris

CHRISTOPHER FOSTER

Partner

McDermott Will & Emery LLP 415 Mission Street, Suite 5600, San Francisco, CA 94105-2616

Tel +1 628 218 3826 **Email** cfoster@mwe.com

Biography | **Website** | **vCard** | **Twitter** | **LinkedIn**

* Admitted to practice law in California, Washington, and Idaho

From: Ashley M. Gjovik (Legal Matters)

<legal@ashleygjovik.com>

Sent: Saturday, December 2, 2023 9:18 AM

To: Foster, Christopher <Cfoster@mwe.com>;

McConnell, Julie <Jmccconnell@mwe.com>; Booms,

Ryan <rbooms@orrick.com>; Riechert, Melinda

<mrieichert@orrick.com>; Mantoan, Kathryn G.

<kmantoan@orrick.com>; Juvinall, Kate

<kjuvinall@orrick.com>; jerry <jperry@orrick.com>;

Mahoney, Brian <brian.mahoney@morganlewis.com>;

harry.johnson <harry.johnson@morganlewis.com>;

kelcey.phillips@morganlewis.com;

mark.stolzenburg@morganlewis.com;

crystal.carey@morganlewis.com; Eberhart, David R.

<deberhart@omm.com>

Subject: Re: Gjovik v Apple | Requesting signed instruments under CLC § 432

Some people who received this message don't often get email from legal@ashleygjovik.com. [Learn why this is important](#)

[External Email]

+ OMM if they're still on this too

Removing Sayed at MWE who per OoO apparently left in Feb '23 (@Chris, Ron left around that time too, and Julie is on leave, so if there are others on your firm now on my NLRB cases, please loop them in).

Can someone from one of these firms please at least confirm receipt of my request? I sent this Tuesday and haven't heard anything back from any of you.

If this request needs to be submitted directly to Apple, please let me know - however y'all are representing Apple and I'm supposedly supposed to go through you with my requests and questions during litigation/adjudication.

It's unclear to me if the NLRB NDA adjudication is now represented by both MWE and Morgan Lewis, or if Morgan Lewis is only on the Cook email and my 1/10/22 witness intimidation and witness retaliation charge, and MWE is still on the NDAs and employment policies and 8/26 & 9/16/21 unfair labor/retaliation charges. If someone can clear that up too please, it would be appreciated.

I also don't know who Apple hired to represent them on the California Dept of Labor cases but I assume that is moot now that I rolled them into the federal civil suit.

Can we also do a roles and responsibilities matrix, maybe?

Thank you.

-Ashley

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Tuesday, November 28th, 2023 at 12:25 AM, Ashley M. Gjøvik (Legal Matters) <legal@ashleygjojik.com> wrote:

Hello Apple lawyers,

I am requesting copies of all instruments I signed (physical and electronic signatures) relating to my obtainment and holding of employment at Apple Inc.

This request is governed by California Labor Code, Article 3, § 432. The litigation exception to § 1198.5 does not apply to § 432.

I am requesting that the Face Gobbler related instrument(s) be released first and expeditiously, and not saved for a bulk release with the others. If Apple does not have a copy of any signed Face Gobbler related instruments, I would like confirmation of that fact and swiftly.

For all instruments, I am requesting to receive records digitally, which should not be an issue as almost all of them were signed digitally. You can share the documents via email attachments or via a shared document repository as long as it allows me to download them without alteration.

As we are over two years into this litigation, I'd expect these records should already be on hand, and as such I do not expect any prolonged delays.

Thank you for your cooperation. Please let me know if you have any questions.

-Ashley

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

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Please visit <http://www.mwe.com/> for more information about our Firm.

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(Additional counsel on following page)

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kmantoan@orrick.com

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Telephone: +1 415 773 5700

Facsimile: +1 415 773 5759

Attorneys for Respondent

Apple Inc.

UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

ASHLEY GJOVIK,

Complainant,

v.

APPLE INC.,

Respondent.

OALJ Case No.: 2024-CER-00001

OSHA Case No.: 9-3290-22-051

**RESPONDENT APPLE INC.'S INITIAL
DISCLOSURES PURSUANT TO
JANUARY 19, 2024 NOTICE OF
DOCKETING AND 29 C.F.R. §
18.50(c)(1)**

1 KATE E. JUVINALL (SBN 315659)
2 kjuvinall@orrick.com
3 ORRICK, HERRINGTON & SUTCLIFFE LLP
4 631 Wilshire Blvd., Suite 2-C
5 Santa Monica, CA 90401
6 Telephone: +1 310 633 2800
7 Facsimile: +1 310 633 2849

8 RYAN D. BOOMS (SBN 329430)
9 rbooms@orrick.com
10 ORRICK, HERRINGTON & SUTCLIFFE LLP
11 1152 15th Street, N.W.
12 Washington, D.C. 20005-1706
13 Telephone: +1 202 339 8400
14 Facsimile: +1 202 339 8500

15 Attorneys for Respondent
16 Apple Inc.
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Pursuant to the January 19, 2024 Notice of Docketing and 29 C.F.R. § 18.50(c)(1), Respondent Apple Inc. (“Apple” or “Respondent”) hereby submits the following Initial Disclosures to Complainant Ashley Gjovik (“Complainant”). Apple makes these Initial Disclosures based upon information currently available to it and reserves the right to supplement all disclosures as discovery progresses. Apple makes these disclosures concerning the claims and defenses properly at issue in OALJ Case No. 2024-CER-00001, which are limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. § 9610 claim and defenses addressed in the Secretary of Labor’s December 8, 2023 findings in OSHA Case No. 9-3290-22-051.¹ *See* 29 C.F.R. § 24.100 *et seq.* (setting forth procedures required to make and appeal determinations regarding alleged whistleblower retaliation under CERCLA).²

These disclosures are made without waiving the right to object on the grounds of competency, privilege, relevancy and materiality, hearsay or any other proper ground and the right to object on any and all grounds, at any time, to any discovery request or proceeding involving or relating to the subject matter of these Initial Disclosures.

Category 1: The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

The following are persons who may have information that Respondent may use to support its defenses in this case:

1. Complainant (information regarding complaints to Respondent regarding the issues raised in Complainant’s August 29, 2021 (ECN76833) complaint that are properly

¹ The December 8, 2023 Findings addressed issues raised by Complainant regarding 825 Stewart Drive in complaints filed on August 29, 2021 (ECN76833) and November 2, 2021 (ECN78416). However, the November 2, 2021 complaint is not at issue in this appeal because it addressed only a claim under the Sarbanes-Oxley Act.

² Complainant also appears to seek review of claims under the Solid Waste Disposal Act, Resource Conservation and Recovery Act, and Clean Air Act, but any such claims were not timely raised in her initial complaint and are thus not properly at issue. *See* 29 C.F.R. §§ 24.103, 24.105. To the extent the ALJ decides to consider any of these claims, Respondent reserves the right to amend these initial disclosures accordingly.

the subject of this proceeding (the “Complaints”), and the reasons for the alleged adverse action(s))

2. Yannick Bertolus (Hardware Engineering Vice President) (information regarding termination of Complainant’s employment)
3. Aleks Kagramanov (Employee Relations Business Partner) (information regarding termination of Complainant’s employment)
4. Ekelemchi Okpo (Employee Relations Business Partner) (information regarding the Complaints to Respondent, the alleged adverse action(s), and Respondent’s policies)
5. Michael Steiger (Environmental Health and Safety Manager) (information regarding the Complaints to Respondent and Respondent’s policies)
6. Jenna Waibel (Employee Relations Business Partner) (information regarding the Complaints to Respondent, the alleged adverse action(s), and Respondent’s policies)

Except for Complainant, all individuals identified above may be contacted through Respondent’s counsel. Following discovery and receipt of additional information regarding the nature of Complainant’s claims, additional witnesses may be identified, and Respondent reserves the right to supplement this list accordingly.

Category 2: A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

The following are the descriptions by category of all documents and things that Respondent currently has in its possession, custody or control that may be used to support its defenses:

- The personnel file Respondent maintained on Complainant
- Complainant’s compensation and payroll records
- Documents regarding Complainant’s Complaints (as defined above) to Respondent from March 2021 through Complainant’s termination of employment
- Documents sufficient to show that Northrop Grumman is the responsible party for the relevant Superfund site cleanup

- Documents regarding Respondent’s policies and procedures in effect from March 2021 to Complainant’s termination of employment
- Documents regarding the termination of Complainant’s employment

To the extent these documents consist of electronically stored information, these documents are located on servers, computers, and other electronic storage media, that are either (a) located at Respondent’s corporate headquarters or in the possession of Respondent’s employees, or (b) in the possession of Respondent’s outside counsel. To the extent any tangible documents or things on these subjects exist in the possession, custody or control of Respondent, they are located at Respondent’s headquarters and may be obtained through Respondent’s outside counsel.

Category 3: A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under § 18.61 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

Apple does not claim any damages at this time.

Dated: February 9, 2024

By: /s/Jessica R. Perry

JESSICA R. PERRY
Attorneys for Respondent Apple Inc.

(Additional counsel on following page)

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Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S INITIAL
DISCLOSURES PURSUANT TO FED. R.
CIV. P. 26(A)(1)**

1 KATE E. JUVINALL (SBN 315659)
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15 Attorneys for Defendant
16 Apple Inc.
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Pursuant to Federal Rule of Civil Procedure 26(a)(1), Defendant Apple Inc. identifies the following witnesses and documents, and makes the following initial disclosures.¹ Defendant makes these disclosures based on information currently available to it at this time, following a good faith inquiry in accordance with Rule 26. Defendant reserves the right to amend and/or supplement these disclosures if and as any further information becomes available during discovery and to rely upon such information as evidence in this action. Defendant makes the following disclosures to expedite the discovery process and without waiving the Federal Rules of Evidence, including the protections of the attorney-client privilege, the work-product doctrine, and any other applicable privilege. Defendant expressly reserves its rights under those privileges and protections. By making these disclosures, Defendant does not concede that the disclosed evidence is relevant or admissible as evidence at trial, and reserves the right to assert any and all evidentiary objections.

Further, the only claims at issue in this lawsuit and not subject to Defendant's forthcoming motion to dismiss—due on July 15, 2024—are those directly related to the allegedly wrongful termination of Plaintiff's employment and/or alleged retaliation during the course of her employment. Thus, Defendant identifies individuals likely to have discoverable information regarding those factual allegations and claims clearly at issue, as well as documents, data compilations, and tangible things that Defendant may use to support its claims or defenses.

Rule 26(a)(1)(A): The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to

¹ Defendant does not believe it is required to provide initial disclosures under FRCP 26(a) because Northern District of California General Order No. 71: Initial Discovery Protocols For Employment Cases Alleging Adverse Action ("GO 71") applies. GO 71 "applies to all employment cases filed in this court after February 1, 2018, that challenge one or more actions alleged to be adverse." GO 71 by its terms is "intended to supersede the parties' obligations to make initial disclosures pursuant to F.R.C.P. 26(a)(1)" in applicable cases. Here, Plaintiff's case "challenge[s] one or more [employment] actions alleged to be adverse" in her wrongful termination and whistleblower retaliation claims. Defendant served its GO 71 disclosures on December 18, 2023 and supplemented those disclosures with additional document productions on April 5, 2024 and May 15, 2024; to date Defendant has produced 418 documents totaling 1,549 pages pursuant to GO 71. Plaintiff has indicated that she does not believe GO 71 applies to this case, and accordingly Defendant makes these FRCP 26(a)(1) disclosures without conceding that they are required in this matter. The parties met and conferred regarding topics set forth in the Standing Order for All Judges of the Northern District of California: Contents of Joint Statement Management Statement on June 25, 2024.

1 support its claims or defenses, unless solely for impeachment, identifying the subjects of the
2 information.

3 Subject to the preliminary statement set forth above, Defendant responds:

- 4 1. Plaintiff (information regarding complaints to Defendant, and termination of
5 Plaintiff's employment)
- 6 2. Yannick Bertolus (Hardware Engineering Vice President) (information regarding
7 termination of Plaintiff's employment)
- 8 3. Aleks Kagramanov (Employee Relations Business Partner) (information regarding
9 termination of Plaintiff's employment)
- 10 4. Ekelemchi Okpo (Labor Relations Business Partner) (information regarding
11 complaints to Defendant and Defendant's policies)
- 12 5. Michael Steiger (Environmental Health and Safety Manager) (information
13 regarding complaints to Defendant and Defendant's policies)
- 14 6. Jenna Waibel (Employee Relations Business Partner) (information regarding
15 complaints to Defendant and Defendant's policies)

16 Except for Plaintiff, all individuals identified above may only be contacted through
17 Defendant's counsel. Following discovery and receipt of additional information regarding the
18 nature of Plaintiff's claims, additional witnesses may be identified, and Defendant reserves the right
19 to supplement this list accordingly.

20 **Rule 26(a)(1)(B): A copy of, or a description by category and location of, all**
21 **documents, data compilations, and tangible things that are in the possession, custody, or**
22 **control of the party and that the disclosing party may use to support its claims or defenses,**
23 **unless solely for impeachment.**

24 Subject to the preliminary statement set forth above, Defendant responds:

- 25 1. E-mail communications concerning Plaintiff, complaints she made to Defendant
26 regarding perceived issues at 825 Stewart, and/or the termination of her employment
27 between Plaintiff and Yannick Bertolus, Antone Jain, Aleks Kagramanov, Antonio
28

1 Lagares, Ekelemchi Okpo, Helen Polkes, Dave Powers, Michael Steiger, Jenna
2 Waibel, and/or Dan West from March 1, 2021 to September 9, 2021.

3 2. E-mail communications concerning Plaintiff, complaints she made to Defendant
4 regarding perceived issues at 825 Stewart, and/or the termination of her employment
5 between or among Yannick Bertolus, Antone Jain, Aleks Kagramanov, Antonio
6 Lagares, Ekelemchi Okpo, Helen Polkes, Dave Powers, Michael Steiger, Jenna
7 Waibel, and/or Dan West from March 1, 2021 to September 9, 2021.

8 3. The personnel file Defendant maintained on Plaintiff.

9 4. Plaintiff's performance reviews.

10 5. Documents relied on to make the decision to terminate Plaintiff's employment.

11 6. Policies relevant to the termination of Plaintiff's employment.

12 7. Job descriptions for positions Plaintiff held.

13 8. Documents showing Plaintiff's compensation and benefits.

14 9. Documents that are directly related to Plaintiff's termination.

15 These documents are in the possession of Defendant's counsel.

16 Defendant reserves the right to supplement the categories of documents as more information
17 becomes available through the discovery process. By listing documents or categories of documents,
18 Defendant does not waive the right to object to discovery requests to which any document or
19 category of documents may be responsive.

20 **Rule 26(a)(1)(C): Computation of any category of damages claimed by the disclosing**
21 **party.**

22 Apple does not claim any damages at this time.

23 **Rule 26(a)(1)(D): Any insurance agreement under which any person carrying on an**
24 **insurance business may be liable to satisfy part or all of a judgment which may be entered in**
25 **the action or to indemnify or reimburse for payments made to satisfy the judgment.**

26 There is no applicable insurance policy that presently covers Plaintiff's claims in this
27 lawsuit.

1 Dated: July 9, 2024

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2
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Melinda Riechert

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UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

ASHLEY GJOVIK,

Complainant,

v.

APPLE INC.,

Respondent.

OALJ Case No.: 2024-CER-00001

OSHA Case No.: 9-3290-22-051

**RESPONDENT APPLE INC.'S
OPPOSITION TO MOTION TO
COMPEL FURTHER RESPONSES
AND PRODUCTION**

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1 **I. INTRODUCTION**¹

2 On May 15, 2024, Complainant served sixty-one (61) separate requests for production
3 (“Requests”) on Apple in this putative whistleblower retaliation case, seeking a sweeping range
4 of materials untethered to the needs of this case (if any claims survive the current round of motion
5 practice)—for example, all security footage from an office building where Apple rents space (825
6 Stewart) for a two-week period in August 2021 (Request No. 43); all badge access records for a
7 five-week period for that same building (Request No. 44); and every document concerning certain
8 maintenance issues for that building for a period of over nine years (Request No. 47). On June 5,
9 2024, this Court advised the parties (*via* email) that it was holding all motions other than
10 Complainant’s Motion to Amend “in abeyance,” and directed the parties to “cooperate with each
11 other in the discovery process” in the interim.

12 Apple has done so. It produced 418 documents spanning 1,549 pages in response to
13 Complainant’s requests for production despite its currently pending and potentially dispositive
14 Motion to Dismiss. Apple’s initial document production included a full range of documents that
15 *might* become relevant to Complainant’s CERCLA whistleblower retaliation claim *if* that claim
16 survives Apple’s Motion to Dismiss. Presently, Apple’s production exceeds what is proportional
17 to the needs of the case because the pleadings are not yet settled. Moreover, if the Court grants
18 the Motion to Dismiss, this case—along with Apple’s discovery obligations—would end.

19 Despite this good faith production, Complainant complains Apple has somehow “refused
20 to cooperate” by failing to immediately produce all the documents she seeks through *sixty-one*
21 sweeping requests. But it was Complainant who has refused to meet and confer in good faith
22 regarding the reasonableness and proportionality of her requests. Many of the Requests are not
23 relevant to Complainant’s CERCLA retaliation claim even if it survives. Others provide either no
24 time limits or unreasonable time limits wholly untethered to the alleged internal complaints on
25 which Complainant’s CERCLA retaliation claim is premised.

26 ¹ On June 27, 2024, the United States Supreme Court issues its decision in *Securities and*
27 *Exchange Commission v. Jarkesy*, Case No. 22-859, 2024 WL 3187811. Apple is still evaluating
28 the potential relevance of that decision to this proceeding and submits this opposition without
prejudice to any rights or remedies *Jarkesy* may afford it.

Discovery in this matter is not a free-for-all, open-ended opportunity for Complainant to demand any and every document she may want from Apple; it should be conducted with an eye towards the needs of this case and adjudication of the particular claims (if any) that would proceed to hearing in this matter. Apple's responses give due consideration to the discoverability of the documents sought through each request and are proportional to the needs of this case at this stage, especially given that the pleadings are still not settled and thus it remains uncertain to what claims and allegations the assessment of relevance and proportionality must be tethered. This Court should deny Complainant's premature and unnecessary motion to compel.

II. RELEVANT PROCEDURAL BACKGROUND

The procedural posture of this case—and the claims that currently are and are not at issue, and the status of motion practice regarding the pleadings—is important framing within which to consider the present motion. As this Court's May 23, 2024 order made clear, "[b]ased on the regulations found at 29 C.F.R. Part 24, the operative complaint in this matter is the August 29, 2021, online complaint filed before OSHA." Order on Operative Complaint (May 23, 2024) (the "May 23 Order") at 1. On April 2, 2024, Complainant filed a motion to amend, seeking to add additional legal claims, alleged protected activity, and alleged adverse actions beyond those in the operative complaint; on April 16, 2024, Apple filed a Motion to Dismiss the lone claim that exists in the currently operative complaint (*i.e.*, a CERCLA whistleblower claim premised on alleged retaliation for Gjovik's various complaints related to alleged safety issues at Apple's office location in a building at 825 Stewart). Specifically, Apple moved this court for an order dismissing the operative OALJ Complaint on the grounds that Complainant fails to state a claim upon which relief can be granted because (1) Apple is not a "Covered Person" under CERCLA with respect to the site at issue; and (2) Complainant does not allege protected activity under CERCLA.² Both motions are fully briefed and pending before the Court.

On May 15, 2024, Complainant served her sixty-one Requests on Apple, seeking wide-

² On April 30, 2024, Complainant filed a brief in opposition to Apple's Motion to Dismiss. On May 10, 2024, Apple filed a motion for leave to file a reply in support of its Motion to Dismiss (along with a copy of Apple's proposed reply brief), and Complainant filed a motion for leave to file a sur-reply.

1 ranging information about not only her alleged complaints and the reasons for her termination but
2 also about various individuals whose relation to her is unclear and about myriad site inspections
3 dating back nearly a decade, over six years before she made the complaints that she alleges
4 prompted the termination of her employment. *See* Mot., Ex. A. On May 22, 2024, Apple filed a
5 motion to stay discovery pending resolution of its Motion to Dismiss. The Court then issued the
6 May 23 Order, permitting Complainant to “submit proposed amendments to the August 29, 2021,
7 online complaint” and Apple to respond, and stating that all pending motions would be “held in
8 abeyance until Complainant’s Motion to Amend has been fully ruled on.” *Id.* at 2.

9 On June 3, 2024, Apple sought clarity from this Court whether it would consider and rule
10 on Apple’s motion to stay discovery pending resolution of its Motion to Dismiss and requested a
11 conference to discuss the issue given that Complainant would soon be filing a new amended
12 complaint. This Court clarified *via* email on June 5, 2024, that “the litigation schedule as set out
13 in the Notice of Hearing issued on March 27, 2024, **has not changed**” (emphasis in original) and
14 directed both parties to “cooperate with each other in the discovery process” until the motion to
15 amend had been decided. The Court also directed Complainant to file her proposed amended
16 complaint (consistent with the May 23 Order) by the next day. Complainant missed her deadline
17 and instead filed her new proposed amended complaint the following day on June 7, 2024.

18 Consistent with the Court’s June 5, 2024 instructions, Apple responded to Complainant’s
19 Requests on June 14, 2024, and produced 418 documents. *See* Mot., Ex. B; Riechert Decl. ¶2.
20 While it is Apple’s position that discovery is not appropriate until a decision is made as to
21 whether any of Gjovik’s claims may proceed (and if so, which ones), Apple has produced
22 documents of potential relevance to the only claim in the operative complaint before this Court—
23 a CERCLA whistleblower retaliation claim. These documents include Complainant’s personnel
24 file, payroll records, stock records, leave of absence records, benefits records, job descriptions,
25 performance reviews, agreements and policies, termination letter and related emails, calendar
26 files, documents regarding Complainant’s complaints about vapor intrusion testing and exposure
27 at 825 Stewart and 825 Stewart’s status as a Superfund site, documents regarding the decision to
28 terminate Complainant’s employment and communications with the custodians that notified

1 Complainant of her termination, communications between HR, communications between Apple's
 2 HR custodians and Apple's EH&S custodians, communications between Complainant and all of
 3 these custodians, communications between Complainant and the EPA, communications between
 4 Complainant and her direct and skip-level managers, communications between these managers
 5 and HR custodians, and communications between Complainant and other Apple employees. *See*
 6 Riechert Decl. ¶3. Apple further agreed to meet and confer with Complainant as appropriate
 7 regarding the scope of the requests following the Court's ruling on Complainant's motion to
 8 amend and Apple's Motion to Dismiss.

9 Upon receipt of Apple's responses and production of documents, Complainant notified
 10 Apple that she believed she was entitled to full discovery on all sixty-one Requests. Apple
 11 attempted in good faith to engage with Complainant regarding specific documents she contended
 12 were missing from the initial production, but Complainant refused. Instead, she repeatedly
 13 referred back to her original Requests, dismissed all of Apple's objections and proportionality
 14 concerns out of hand, and filed the instant motion on June 19, 2024. *See* Mot., Ex. C
 15 (correspondence between the parties between June 14, 2024 and June 19, 2024).

16 **III. LEGAL STANDARD**

17 29 C.F.R. section 18.50, *et seq.* set forth rules about discovery for administrative hearings
 18 before the OALJ. Parties may obtain discovery concerning any nonprivileged matter that is
 19 "relevant to any party's claim or defense," subject to an ALJ's limitations. 29 C.F.R. § 18.51(a).
 20 However, a request for production "must describe with reasonable particularity each item or
 21 category of items to be inspected," and the receiving party is permitted in response to "either state
 22 that inspection and related activities will be permitted as requested or state an objection to the
 23 request, including the reasons." *Id.* §§ 18.61(b)(1)(ii), (2)(ii).

24 The Court "must" limit discovery when "[t]he discovery sought is unreasonably
 25 cumulative or duplicative, or can be obtained from some other source that is more convenient,
 26 less burdensome, or less expensive," as well as when "[t]he burden or expense of the proposed
 27 discovery outweighs its likely benefit, considering the needs of the case, the amount in
 28 controversy, the parties' resources, the importance of the issues at stake in the action, and the

1 importance of the discovery in resolving the issues.” 29 C.F.R. § 18.51(b)(4)(i), (iii).
2 Discoverability under the operative rules is therefore expressly tethered to and governed by the
3 claims (and related defenses) at issue in the matter, which in turn inform “the needs of the case”
4 and the “issues” that would need to be resolved. “ALJs have wide discretion to limit the scope of
5 discovery and will be reversed only when such evidentiary rulings are arbitrary or an abuse of
6 discretion.” *McNiece v. Dominion Nuclear Connecticut, Inc.*, ARB Case No. 15-083, 2016 WL
7 7212569, at *5 (Nov. 30, 2016).

8 While the regulations generally address the scope and limits of discovery, they do not
9 specifically address motions to compel. *See* 29 C.F.R. §§ 18.50 *et seq.* “The Federal Rules of
10 Civil Procedure (FRCP) apply to situations not controlled by Part 18 or rules of special
11 application.” *Blanton v. Biogen IDEC, Inc.*, ARB Case No. 2006-SOX-4, 2006 WL 3246815, at
12 *2 (Apr. 18, 2006). Under the FRCP, the moving party bears the initial burden of showing that
13 the requested information is relevant and that the opposing party’s response is inadequate or
14 incomplete. *See, e.g., Campaign Legal Ctr. v. Iowa Values*, 2024 WL 81278, at *5 (D.D.C. Jan. 8,
15 2024); *Mi Familia Vota v. Hobbs*, 343 F.R.D. 71, 80 (D. Ariz. 2022); *Servicios Funerarios GG,*
16 *S.A. de C.V. v. Advent Int’l Corp.*, 2023 WL 7332836, at *2 (D. Mass. Nov. 7, 2023), *aff’d*, 2024
17 WL 2748348 (D. Mass. May 29, 2024); *Packman v. Chicago Trib. Co.*, 267 F.3d 628, 647 (7th
18 Cir. 2001) (denial of discovery proper unless moving party can show “actual and substantial
19 prejudice resulting from the denial of discovery”). Only if the moving party establishes a need
20 for the requested discovery would the burden then shift to the party opposing discovery to show
21 why it should not be permitted. *See id.*; *accord In re: Jiminez & Sons Landscaping, Inc.*, ARB
22 Case No. 2021-TNE-00019, 2021 WL 11714734, at *1 (Sept. 8, 2021) (only if moving party
23 makes “threshold showing of relevance” must opposing party and Court consider, *inter alia*,
24 “whether the burden outweighs the probative value”). Such a showing would be informed by the
25 considerations of proportionality and burden that the regulations outline, all of which tie back to
26 the needs of a particular case in light of the particular claims at issue.

27 ///

28 ///

1 **IV. LEGAL ARGUMENT**

2 **A. Complainant Has Not Demonstrated the Relevance of the Documents She**
 3 **Seeks Through Her Requests.**

4 Complainant’s motion to compel makes no effort to satisfy her burden to show that any or
 5 all of the documents she sought in her sixty-one Requests but has not received are relevant to this
 6 matter. She likewise made no such effort in the meet and confer process, instead simply
 7 reiterating her entitlement to everything and her contention that every one of Apple’s tailored
 8 objections to particular requests must be improper. *See* Mot., Ex. C. Because Complainant has
 9 failed to demonstrate the relevance of any particular document(s) sought, her motion fails even
 10 absent consideration of Apple’s objections. *See In re: Jiminez & Sons Landscaping, Inc.*, 2021
 11 WL 11714734, at *1.

12 **B. Apple Has Cooperated in Discovery, Producing Hundreds of Documents Even**
 13 **Though their Discoverability is Unclear at This Stage of the Matter.**

14 Complainant contends that Apple has “refuse[d] to engage in properly scheduled
 15 discovery.” Mot. at 5. But Apple has engaged in a manner appropriate and proportional to the
 16 needs of the case at this stage. The set of claims that will go forward in this matter—if any—
 17 remains unsettled. Unless Complainant’s Motion to Amend is granted, the only claim at issue
 18 will be a CERCLA whistleblower retaliation claim regarding alleged complaints about 825
 19 Stewart; but Apple has argued that claim should be dismissed on the pleadings because
 20 Complainant has not stated a claim under CERCLA’s particular whistleblower provision.³ When
 21 the pleadings are unsettled, the scope of the claims and issues is unclear and a party responding to
 22 discovery cannot reasonably determine whether the information sought is relevant or proportional
 23 to the needs of the cases. *See, e.g., Palmer v. Cognizant Tech. Sols. Corp.*, 2019 WL 9359775, at
 24 *1 (C.D. Cal. Feb. 4, 2019) (limiting discovery ordered with pending motion to where the parties

25 _____
 26 ³ As noted in prior submissions to this Court, Complainant separately filed an OSHA
 27 whistleblower retaliation claim (on which DOL/OSHA found no merit following administrative
 28 review); a SOX whistleblower retaliation claim (which Judge Chen of the Northern District of
 California dismissed with prejudice); and state law whistleblower retaliation claims (at least some
 of which will go forward in her federal case).

could “mutually agree to engage in certain aspects of the discovery process,” because otherwise “permitting discovery at this juncture may lead to premature and needless disputes regarding Defendants’ discovery responses”). This is why courts routinely stay discovery pending resolution of a motion to dismiss. *See, e.g., Ware v. BNSF Railway Co.*, ALJ Case No. 2020-FRS-00063 (Mar. 5, 2021) (granting respondent’s motion to stay written discovery pending resolution of motion to dismiss); *Simkus v. United Airlines, Inc.*, ALJ Case Nos. 2018-SOX-00035, 2018-SWD-00003 (Oct. 16, 2018) (same).⁴ Requiring the parties to engage in comprehensive discovery at this early juncture would not be an efficient use of resources, including both those of the parties and this Court. *See, e.g., Cima v. Wellpoint Health Networks, Inc.*, 2006 WL 1064054, at *4 (S.D. Ill. Apr. 20, 2006) (“A ruling on [the pending motion to dismiss] will necessarily result in greater certainty of what claims remain pending. It would be wasteful for the parties to engage in extensive discovery prior to a ruling on the motion.”).

Here, the Court has not stayed discovery and has directed the parties to “cooperate with each other in the discovery process” while the initial round of motions are pending. Apple has done so. It produced 418 documents spanning 1,549 pages in response to Complainant’s Requests that would be relevant to the operative complaint should it survive Apple’s Motion to

⁴ *See also Hilliard v. Cnty. of Henrico*, ALJ Case No. 2018-NTS-00006 (Aug. 17, 2018) (staying discovery because “if the Court grants Respondent’s Motion to Dismiss, the discovery requests will be moot”); *Duran v. City of Porterville*, 2013 WL 12430031, at *1-2 (E.D. Cal. Jan. 17, 2013) (“[W]hen a case is still in the pleadings stage and a motion to dismiss is pending, a motion to compel discovery is considered premature absent extraordinary circumstances.”); *Morris v. Barra*, 2012 WL 4900203, at *2 (S.D. Cal. 2012) (“Given that this case is still in the pleading stage, the Court finds that merits-based discovery is inappropriate at this time, as its relevancy is outweighed by the burden and expense of production[.]”); *Thomas v. Felker*, 2011 WL 2225133 (E.D. Cal. June 7, 2011) (“Plaintiff is apprised that any motion to compel will be found premature until the court has issued its final ruling on the motion to dismiss[.]”); *Duggan v. Astrue*, 2010 WL 2035285 (N.D. Cal. May 19, 2010); *Nieves v. Just Energy New York Corp.*, 2020 WL 6720871, at *4 (W.D.N.Y. Nov. 16, 2020) (granting motion to stay pending motion to dismiss because discovery was “premature” and if motion to dismiss were granted “then discovery would not occur”); *Thaht Sin v. Mass. Dept. of Corr.*, 2012 WL 1570810, at *7 (D. Mass. May 2, 2012) (“Because the stay was ordered pending resolution of the motion to dismiss, discovery will proceed following the resolution of that motion in this order[.]”); *Mayfield v. Bank of America, N.A.*, 2010 WL 11647218, at *2 (N.D. Ga. Nov. 4, 2010) (denying motion to compel discovery based on pending motion to dismiss and no answer on file).

Dismiss.⁵ See, e.g., *Nieman v. Southeastern Grocers*, ARB Case. No. 2018-0058, 2020 WL 6117907, at *6 (Oct. 5, 2020) (1,100 pages of documents produced sufficient to demonstrate reasons for termination); *Powers v. Pinnacle Airlines*, ARB Case No. 2005-SOX-65, 2005 WL 4889053, at *9-10 (July 19, 2005) (limiting discovery in whistleblower case under certain environmental acts to employee's complaints and termination and not the underlying acts themselves). These documents include Complainant's personnel file, payroll records, stock records, leave of absence records, benefits records, job descriptions, performance reviews, agreements and policies, termination letter and related emails, calendar files, communications between Complainant and her managers and/or Apple's HR and EH&S representatives, and communications between these representatives regarding Complainant's complaints spanning from the time Complainant made inquiries through her date of termination. See Riechert Decl. ¶3. These documents reveal witnesses and dates, as well as Apple's and other individual's responses to Complainant's concerns. *Id.* Not only does the production include communications with Complainant, but it also includes communications about her internal complaints among other individuals. *Id.* There are also documents explaining the termination of Complainant's employment. *Id.* Given that it is unclear whether Complainant can even plead a viable cause of action in this forum, Apple's production is more than proportional to the needs of the case as it currently stands. 29 C.F.R. § 18.51(b)(4)(iii); see also *Nieman*, 2020 WL 6117907, at *6.

C. Apple's Objections Were Appropriate and Properly Tailored.

Complainant also contends that Apple's objections are "boilerplate, non-specific, and in bad faith." Mot. at 5. As argued above, absent a threshold showing of relevance as to particular

⁵ That Apple has already produced these documents to Complainant in other proceedings also alleging whistleblower retaliation (albeit under different statutes) is irrelevant to whether Complainant's motion to compel should be granted at this stage of this matter. Indeed, given that Complainant has put her termination at issue in multiple different forums—alleging she was a whistleblower, and that her termination was a result of protected activity, in each forum—it is entirely unsurprising that documents that would be potentially relevant (and thus discoverable) in one matter would be in another as well. Similarly, Complainant laments that Apple's production is deficient in part because (*inter alia*) it includes "communications she directly sent or received" and thus "already has in her possession." Mot. at 11. But Complainant's decision to retain documents related to her employment with Apple post-termination likewise has nothing to do with Apple's discovery obligations.

1 documents sought, Complainant has not made even an initial showing of an entitlement to relief.
2 Nor does she make any effort to argue that any particular objections are improper as to any
3 specific request, instead broadly attacking any response that contained (*inter alia*) a relevance or
4 proportionality objection without meeting that objection as to particular categories of documents
5 (for example, Request Nos. 43, 44, and 47 cited above).

6 If this Court were to consider Apple's objections and subsequent attempts to meet and
7 confer, it would see that Apple made good faith objections targeted to the specific Requests at
8 issue. There are no general objections in Apple's response. Instead, Apple specifically addressed
9 each of Complainant's Requests and asserted objections appropriate to the particular Request, as
10 well as noting where it was producing documents (and which documents) as well as its
11 willingness to meet and confer with Complainant including regarding "discovery limitations set
12 forth in 29 C.F.R. § 18.51(b)(4)."

13 Complainant broadly argues that everyone of Apple's objections is "boilerplate." Mot. at
14 5. They are not. "[C]opying and pasting an objection, by itself does not render that objection a
15 boilerplate objection"—particularly if multiple requests suffer from the same deficiencies and are
16 subject to the same objections. *VeroBlue Farms USA Inc. v. Wulf*, 345 F.R.D. 406, 419 (N.D.
17 Tex. 2021) (citing *Amos v. Taylor*, 2020 WL 7049848, at *7 (N.D. Miss. Dec. 1, 2020)). Rather
18 "[o]bjections are typically deemed 'boilerplate' when they are identical and ***not tailored to the***
19 ***specific discovery request.***" *Id.* (emphasis added); *see also Amazing Ins., Inc. v. DiManno*, 2020
20 WL 5440050, at *5 (E.D. Cal. Sept. 10, 2020); *Makaeff v. Trump Univ., LLC*, 2013 WL 990918,
21 at *5 (S.D. Cal. Mar. 12, 2013). Here, Apple's objections are tailored to each specific discovery
22 Request.

23 For example, Apple asserted relevance objections where appropriate given that the claims
24 (if any) that will go forward in this matter are indeterminate at present, as well where the
25 documents sought plainly bear no relation to the claims that could even conceivably be a part of
26 this action. For example, Request No. 61 seeks "[a]ll documents concerning 825 Stewart Drive
27 with Ronald Sugar between April 1 2021 through December 31 2021." But Mr. Sugar was the
28 subject of Complainant's complaint about conduct she characterizes as violative of SOX (and

1 thus as related to her SOX whistleblower retaliation claim). *See* Riechert Decl. ¶4, Ex. A (Dec.
2 10, 2021 Case Activity Worksheet). Complainant elected to “kick out” that claim to federal court
3 (where it was subsequently dismissed with prejudice); there is no legitimate basis to continue to
4 seek documents regarding Mr. Sugar in this forum.

5 As concerns privilege, Apple asserted that objection only as to those Requests that it
6 believes may seek the discovery of information protected by the attorney client privilege and/or
7 work product doctrine; for the remainder; Apple did not assert the objection. *See* Mot. Ex. B,
8 Responses to Request Nos. 43-55.

9 Apple likewise did not assert a third-party privacy objection to those Requests that did not
10 appear to seek third party information. *See id.*, Responses to Request Nos. 1, 43. But as to others,
11 their express language appears designed to seek confidential information regarding and
12 communications with third parties. *See, e.g.*, Mot. Ex. A, Request No. 31 (seeking “all
13 documents concerning” Apple and Northrup Grumman), 32 (seeking “all documents concerning”
14 Apple and Oaktree Capital, 33 (seeking “all documents concerning” Apple and Hines), 34
15 (seeking “all documents concerning” Apple and GI Partners), 35 (seeking “all documents
16 concerning” Apple and CalSTRS).

17 Many other Requests could be understood to seek confidential information regarding
18 third-party Apple employees, such that Apple appropriately objected. *See, e.g., id.*, Request Nos.
19 2, 4, 8, 21-25. The California Constitution protects an individual’s privacy rights, and an
20 employer has a legal duty to protect its employees’ private information. *See Belaire-West*
21 *Landscape, Inc. v. Superior Ct.*, 149 Cal. App. 4th 554, 558 (2007); *Pioneer Electronics (USA),*
22 *Inc. v. Superior Ct.*, 40 Cal.4th 360, 370 (2007); *Hill v. Nat’l Collegiate Athletic Assn.*, 7 Cal.4th
23 1, 20, 40 (1994); *see also* Cal. Civ. Code § 1798.140(v)(1) (employee personal information
24 including “professional or employment-related information protected under the California
25 Consumer Privacy Act of 2018”). That is precisely what Apple is doing here. Apple’s assertion
26 of that objection as to particular Requests was entirely appropriate.

27 Apple also appropriately objected to those Requests that appear to seek documents that
28 may contain confidential, proprietary, and/or trade secret information. *See, e.g.*, Mot. Ex. B,

1 Response to Request Nos. 40 (“All documents sent by or received by Antone Jain and concerning
 2 825 Stewart Drive”), 41 (“All documents concerning EHS records and reports for 825 Stewart
 3 Drive”); 42 (“All documents concerning indoor air test plans, testing, and results for 825 Stewart
 4 Drive”); 49 (“All documents concerning the ‘Gobbler’ / ‘Glimmer’ Informed Consent Forms
 5 and/or NDAs”); 53 (“All documents concerning IRB review of the practice of scanning employee
 6 ears”). Complainant has to date failed to engage in discussions regarding appropriate measures to
 7 protect Apple’s confidential information in this matter, including entry of an appropriate
 8 protective order. Particularly given that it is unclear what if any claims will go forward,
 9 Complainant’s wholesale insistence on discovery of Apple’s confidential information without a
 10 willingness to meet and confer regarding Apple’s concerns as to these specific Requests is not
 11 well taken.

12 Apple did not object on vagueness grounds to those Requests that described with
 13 sufficient particularity the information sought. *See* Mot. Ex. B, Responses to Request Nos. 1, 43,
 14 44, 45, 55. For the others, Apple objected and identified the vague and ambiguous language
 15 contained in the Request in its response and objected to the extent it was intended to impose a
 16 disproportionate burden on Apple, which Complainant could have attempted to address through
 17 the meet and confer process had she chosen to engage. *See, e.g., id.*, Responses to Request Nos.
 18 10 (“[a]ll documents” and “off-boarding”), 24 (“[a]ll documents” and “about Complainant and
 19 Jenna Waibel”), 26 (“[a]ll documents” and “about Complainant”), 39 (“all documents” and
 20 “concerning 825 Stewart Drive”).

21 Finally, Apple appropriately limited its objections regarding scope and overbreadth to
 22 those Requests that are objectionable on those bases. For those Requests that are not overbroad
 23 as to time, Apple does not assert an objection on that basis. *See id.*, Responses to Request Nos. 1,
 24 4, 43, 44, 45. Other Requests are overbroad because they have no time restriction whatsoever and
 25 are “unlimited in time.” *See id.*, Responses to Request Nos. 2, 8, 10, 12, 16-18 32-35, 49-54.
 26 Other Requests are overbroad because they seek information from after Complainant’s
 27 employment ended, which bear no obvious relevance to evaluating whether she was terminated
 28 for CERCLA-protected activities during her employment. *See id.*, Responses to Request Nos. 3,

1 5, 6, 7, 9-11, 13-15, 29. And still other Requests are overbroad because they seek documents pre-
2 dating when Complainant alleges in the operative August 29, 2021 complaint that she first made
3 protected complaints (*i.e.*, before March 17, 2021). *See id.*, Responses to Request Nos. 19-28, 30-
4 31, 36, 37, 38, 39, 40, 41, 42, 45, 46, 47, 48, 56-61.

5 In sum, Apple's objections were appropriately selected for and tailored to the specific
6 Request to which Apple was responding. Complainant's refusal to acknowledge the validity of
7 any of those objections—while also failing to make any showing as to the relevance or
8 proportionality of the documents she seeks—is not a sound basis on which to grant her motion.

9 **V. CONCLUSION**

10 For the foregoing reasons, Apple respectfully requests that the Court deny Complainant's
11 motion to compel.

12
13 Dated: July 3, 2024

By: _____

Melinda Riechert

MELINDA S. RIECHERT
Orrick, Herrington & Sutcliffe LLP
Attorneys for Respondent Apple Inc.

EXHIBIT C

Meet and Confer
April 01, 2024

Ashley Gjovik
vs.
Apple Inc.



Meet and Confer

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4 ASHLEY GJOVIK,)
5 Plaintiffs,)
6 vs.) Case No. 23-cv-4597-EMC
7 APPLE INC.,)
8 Defendants.)
9)

10

11

12 OALJ 26(f) MEET AND CONFER

13 TELEPHONIC MEETING

14

15 Monday, April 1, 2024

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23

24 REPORTED BY:
ANGELA KOTT, CSR 7811
25 JOB NO: 10139539

Meet and Confer

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17 ---oOo---

25

Meet and Confer

1 P R O C E E D I N G S 10:33 a.m.

2

3 MS. RIECHERT: We're ready to go on the
4 record. We have a court reporter here and we are here
5 to talk about the 26(f) rules for the DOL.

6 And I thought it would be good if we started.

7 Do you have them in front of you, Ashley?

8 MS. GJOVIK: Yeah, I do.

9 MS. RIECHERT: All right. Great.

10 So the first one talks about initial
11 disclosures. And I think we agree that we're done
12 with that, right? We've each done our initial
13 disclosures.

14 MS. GJOVIK: And, yeah, I was going to look
15 at it again and see. I might need to amend a couple
16 details on the damages, but it looks like we have five
17 days after today to potentially do that.

18 MS. RIECHERT: And then the next one, the
19 basis of the claims and defenses.

20 I thought it would be helpful if you started
21 by telling us what you think the issues are that the
22 DOL is going to decide.

23 MS. GJOVIK: Yeah, so I didn't know before
24 this meeting -- I'm sorry. We're on the record?

25 MS. RIECHERT: Yeah.

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1 MS. GJOVIK: I didn't know before this
2 meeting of some of the details of my request for
3 amendment was the basis. I'm also unaware of the
4 details of OSHA's complaint, what they included and
5 what they did not.

6 So I'm also going to be motioning -- which
7 might be unnecessary -- but to add the adverse
8 employment actions I had previously complained of as
9 well as specific protected activity under CERCLA that
10 was not addressed in the determination.

11 The real center of my complaints are around
12 the cracked slab. The reporting the cracks to the
13 EPA, the EPA conducting the inspection on August 19th
14 due to my reports -- in their official
15 documentation it was because of my reports. But there
16 were a number of issues. And Apple apparently sealing
17 the cracks right after I was put on leave.

18 So that whole timeline of events I think is
19 the primary claims -- really goes to the CERCLA
20 claims, but there's also, as noted in the brief, a
21 number of other issues.

22 There was a the sub-slat de-pressurization
23 system concerns, the sub-slat ports. A number of
24 issues to do with the vapor intrusion mitigation
25 system, with very specific technical inquiries and

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1 feedback I gave Apple, and also then shared with EPA
2 and then forwarded back to Apple. The EPA then agreed
3 with me during the inspection.

4 So the protected activity under CERCLA, you
5 know, it started in, you know, mid-March, but what
6 seems like the -- the most critical time seems to be
7 in July, June and July, once the cracks were
8 identified and I started raising concerns specific to
9 the cracks and a duty to ensure there's oversight, and
10 being told there's not, and then us back and forth,
11 and again, leading to the inspection.

12 And then I definitely will also be raising
13 that Apple, I'm going to argue, went out of their way
14 to make sure I never found out there was an
15 inspection. And even in the responses to OSHA there
16 was no mention of the inspection, which is clearly
17 material. So I'm going to add that as an argument
18 under pretext for the adverse employment actions.

19 These are all things that I had in my claims
20 with OSHA. We have the hostile work environment,
21 which I complained of directly, and counsel addressed
22 in their answer even.

23 And the change in work -- losing projects
24 that were good for review, increase of projects that
25 were destined to fail. High increase in workload

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1 overall. The leave with the not being able to go to a
2 training. Not being able to come back.

3 Then of course the -- I'm going to definitely
4 raise the two outreach attempts by employee relations,
5 Ekelemchi Okpo.

6 THE REPORTER: I'm sorry. I didn't get that.

7 MS. GJOVIK: Ekelemchi Okpo is his name.

8 MS. RIECHERT: Can you spell that?

9 MS. GJOVIK: Are you guys new?

10 MS. RIECHERT: The court reporter is new, and
11 she doesn't know all the names here. So she needs
12 to --

13 MS. GJOVIK: Oh, right. Say Mr. Okpo,
14 O-k-p-o.

15 THE REPORTER: Thank you.

16 MS. GJOVIK: Sorry. You're welcome.

17 So Mr. Okpo reaching out to me on September
18 3rd and September 7th, what appeared to be under the
19 pretext of giving me an update on my concerns, but
20 then come to find out that was after Apple started
21 investigating me.

22 So I'll definitely be interested in any kind
23 of documentation around what he was attempting to do.
24 My assumption was something negative against me while
25 pretending to be addressing my concerns. So I'm

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1 interested in any documentation around that.

2 And then of course, the events leading up to
3 the outreach from -- I can't say his last name -- the
4 workplace violence investigator, Cragaminov something,
5 just the workplace violence.

6 The, you know, the events leading up to that.
7 The decision behind it, who made the decision, when
8 they made the decision.

9 And then also for pretext, of course, I'll be
10 very interested in any documentation around the things
11 I heard that were occurring as soon as I was put on
12 leave, including all the staff meetings where they
13 talked about "the Ashley issue."

14 Dan West apparently going around -- D-a-n
15 W-e-s-t, supervisor Dan West -- saying he's planning
16 on talking about "the Ashley issue" at the October
17 all-hands, which is when I knew I was never coming
18 back in my opinion. And other communication that was
19 happening very early on in that period.

20 And also for -- I assume Apple is sticking
21 with their original defense. And if so, rebutting, of
22 course, the failure to cooperate. We're arguing I was
23 trying to cooperate and there's ample precedent of
24 requesting written communications in situations such
25 as that.

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1 But then also pointing out the Gobbler stuff
2 is not only protected, but other employees had already
3 spoken out in more detail and were not disciplined,
4 were promoted. Same thing for the ear thing. That
5 was already public.

6 So pointing out that that clearly wasn't --
7 you know, would have been fired anyways.

8 I think that's pretty much my summary.

9 THE REPORTER: I'm sorry. The "ear thing"?
10 E-a-r, thing?

11 MS. GJOVIK: The ear thing, e-a-r. Yeah,
12 Apple wanted to scan my ear canals and kept asking.
13 And I said please stop. And they said we fired you
14 because you told people we wanted to scan your ear
15 canals.

16 And I said, "That's weird."

17 THE REPORTER: And one more thing. The
18 "Gobbler stuff"?

19 MS. GJOVIK: So Gobbler, G-o-b-b-l-e-r. Face
20 Gobbler. It was an app that was taking pictures and
21 biometrics of faces whenever they were in front of an
22 iPhone camera.

23 And I complained about it and put pictures it
24 took of me without me like triggering it in my home
25 and complained about it. And Apple said that was

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1 secret, too.

2 MS. RIECHERT: Okay. That sounds like that's
3 pretty thorough. We, of course -- our defenses are
4 set forth in the decision of the investigator that
5 you're appealing from, so I think you pretty much
6 understand what our defenses are.

7 And with respect to your request to amend, we
8 would -- you know, I'm still looking into the e-mail
9 that you sent this morning, which I haven't had a full
10 chance to review yet, but we do think that you should
11 not be allowed to amend because it's barred by the
12 statute of limitations.

13 And you know, our belief that this case is
14 all about -- is retaliation. Was there a basis -- you
15 know, did the company retaliate, did the company fire
16 you because it retaliated against you because of your
17 complaints.

18 That's the only issue that we see is the
19 issue in the case.

20 MS. GJOVIK: Okay. So I encourage you to
21 look at the e-mails I sent and hopefully get back to
22 me soon. I'm planning on filing it tomorrow. For now
23 I'll put opposed, unless I hear otherwise.

24 But the precedence is extremely clear on
25 these cases once they're referred to the Office of

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1 Administrative Law judges, that the statute of
2 limitations applies to the adverse employment actions,
3 not the motive.

4 So there is a ton of precedent of people
5 adding additional claims later, especially when
6 there's new knowledge of a new motive they weren't
7 aware of at that time, sometimes during discovery and
8 later.

9 So there's no statute of limitations of the
10 protected activity. You know, employers always will
11 argue, you know, maybe it's too much temporal
12 proximity, or something like that. But ample
13 precedent of adding it on and allowing an
14 investigation during the OALJ proceedings.

15 MS. RIECHERT: So do you have any questions
16 about what our defenses are or the positions that
17 we're taking?

18 As I say, I think they are pretty clear from
19 the decision below and with respect to the statute of
20 limitations, and that the new claims are under -- that
21 you're trying to raise, we don't believe it's
22 appropriate to raise those new claims at this stage
23 and it would be barred by the statute of limitations.

24 MS. GJOVIK: You're saying that for the Clean
25 Air Act and the RCRA?

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1 MS. RIECHERT: Yes. And also, you know, we
2 also claim that you had an obligation to exhaust your
3 administrative remedies and that you did not timely
4 exhaust your administrative remedies under these new
5 claims you're trying to add.

6 MS. GJOVIK: Tell me more about that.

7 MS. RIECHERT: Yeah. So you're supposed to
8 file a claim, I think it's within 30 days of learning
9 of the basis for the retaliation. And we believe that
10 you knew that in February of 2023 and you didn't file
11 a claim within 30 days.

12 So that's one of the defenses asserted.

13 MS. GJOVIK: You're welcome to whatever
14 defenses you would like to, but again, I'm going to
15 encourage you to go read some of the notes I sent you.
16 The statute of limitations has nothing to do with
17 motive, other than retaliation.

18 So once you're aware of an adverse employment
19 action, that's when you file. It doesn't matter the
20 reasons why, other than you thought it was
21 retaliation. You can figure out the rest later.

22 Sometimes people just have like a feeling it
23 was retaliation. They go through discovery, they find
24 out, oh, it was a bunch -- so you're welcome to argue
25 it. I don't think it will be successful.

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1 I do have a lot of questions about Apple's
2 defense, actually.

3 Would you mind walking me through, like I
4 just did with my claims, to walk me through Apple's
5 plan on the defense.

6 MS. RIECHERT: Yeah, I mean, I think as I
7 said, I don't want to repeat everything that was said
8 in the Judge's order below.

9 But if you want to know what our defenses
10 are, we agree with the decision of the Administrative
11 Law Judge below -- yeah, of the investigator, excuse
12 me, below, that for all the reasons that he denied
13 your claim, those are our defenses to the claim. So
14 the claims that you had asserted before OSHA that we
15 knew about.

16 And then we have additional defenses to the
17 potential new claims, including the lack of exhaustion
18 and the statute of limitations.

19 MS. GJOVIK: Okay. I'm going to ask again,
20 one more time, if you wouldn't mind -- I mean, the
21 determination from OSHA now is moot and completely
22 irrelevant in the Office of Administrative Law Judge
23 case.

24 The decision was also very brief and
25 confusing and you probably read my response. So I was

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1 transparent with you and I walked you through an
2 overview of my claims.

3 I would appreciate it if you could please
4 walk me through your claims, not just saying "whatever
5 the investigator said."

6 MS. RIECHERT: Yeah, but that is our claim,
7 right?

8 So if you want to know what our claims are,
9 just read the investigator's opinion. That's a
10 summary of our claims. It doesn't -- we only have
11 half an hour today and it doesn't seem fruitful for us
12 to -- for me to just read through what the
13 investigator said.

14 MS. GJOVIK: So the rules in, you know,
15 reference to the Judge's order was for us to meet and
16 confer and discuss our claims and defenses.

17 Because that decision is irrelevant here, I
18 feel like you have not yet walked me through your
19 defenses for my CERCLA claim.

20 MS. RIECHERT: Right. But the point is, our
21 defenses are what's in the order below. I realize
22 this is a de novo hearing, but you can just look at
23 what the investigator below found. That's what our
24 defenses are.

25 Why do you need me to read the opinion of the

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1 investigator below to tell you what our defenses are?
2 That doesn't seem like it would be a fruitful use
3 of --

4 MS. GJOVIK: I'm asking you on behalf of
5 Apple to meet and confer with me and explain to me
6 Apple's defense plans related to this case, which so
7 far has just been "Go look at that order," which I'm
8 going to say just one more time, I don't think that's
9 sufficient.

10 I would appreciate a good-faith effort to
11 just -- you don't have to go as thorough as I did, but
12 at least summarize, I would appreciate.

13 MS. RIECHERT: Yes. Well, obviously, one of
14 the defenses is that you -- that was not the reasons
15 that you were fired from your job, the fact that you'd
16 made complaints.

17 And as you've said in your claim, the reasons
18 you were fired is for disclosing confidential
19 information that was, we believe, was confidential and
20 that you had no right to disclose and you did
21 disclose.

22 And so the primary defense of the claim is
23 that you were not in fact retaliated against for
24 filing your letters with the EPA about the cracked
25 slab.

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1 MS. GJOVIK: Is Apple going to acknowledge or
2 reference or say anything about the EPA inspection in
3 the --

4 MS. RIECHERT: The issue in the case is
5 whether you were retaliated against. So what action
6 did Apple take against you and why did it take those
7 actions. That's what the issue is in a retaliation
8 case.

9 You know, did you make a complaint? Were you
10 terminated? Was there a connection between the two?
11 Would you have been terminated anyway?

12 And then, of course, the other reason that we
13 said you were terminated is for failure to cooperate
14 in the investigation. And I know you covered that in
15 your discussion as well. You think you did cooperate
16 and we think you didn't cooperate.

17 So those are really the two primary defenses
18 that we have to the claim, to why you were let go.
19 And again, I don't want to repeat everything that was
20 in the order below from the investigator.

21 MS. GJOVIK: Okay. So it sounds like you are
22 saying to me, "We would have fired her anyways," but
23 not addressing any of the prima facie elements,
24 including the protected activity.

25 And I'm aware of how retaliation claims work.

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1 And this is a -- you know, we have discovery. We can
2 do depositions. We get to really dig into this stuff.

3 And these are topics I'm going to be
4 interested in. I'm kind of just interested, you know,
5 what is Apple's stance, if Apple knows, or am I
6 basically going to be asking these questions and
7 presenting to the ALJ during the hearing and Apple's
8 just going to sit there and say, "This is irrelevant.
9 We refuse to answer," because that's what I'm getting
10 from your answer right now?

11 MS. RIECHERT: No. I'm not -- you shouldn't
12 be getting that from my answer.

13 I agree that the question is, did you engage
14 in protected activity under CERCLA? And we either
15 will agree on that or we won't agree on that.

16 But that is one of the issues: Did you
17 engage in protected activity?

18 And then the second issue is: Were you
19 terminated? And the answer to that is yes, so we're
20 not -- don't need to dispute that issue.

21 And then were you terminated because you
22 engaged in protected activity?

23 And we say no, that's not why you were
24 terminated. You were terminated for revealing
25 confidential information and for not cooperating in

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1 the investigation.

2 And then the question is, you know, even
3 though you engaged in protected activity, would you
4 have been terminated anyway, even though you didn't --
5 you had engaged in protected activity?

6 So those we see are the legal issues or
7 the -- maybe legal and factual issues in the case.

8 Did you engage in protected activity? Was
9 adverse action taken in the sense that you were
10 terminated? And then, were you terminated because you
11 engaged in protected activity?

12 Or were there other reasons --

13 MS. GJOVIK: I'm sorry. The inspection I
14 think is absolutely key to two prongs of that test,
15 which is protected activity, and then the next is in
16 causation.

17 As you must be aware, the timing is
18 incredibly suspect of when I was removed from the
19 workplace shortly after Apple was notified of the
20 inspection. All of the EHS work that occurred
21 immediately after, starting the day I was removed.
22 And the EPA coming in and inspecting, making note of
23 freshly sealed cracks and citing a number of issues.

24 And then despite my direct inquiries as to
25 what the status of the office was, never ever being

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1 told that there was any kind of inspection and only
2 found out myself through FOIA to EPA.

3 So I think that is just like drowned in
4 pretext, in my opinion. And I will be leaning heavily
5 into that for the causation argument.

6 I'm interested if Apple has any kind of
7 defense related to that at all? And then especially
8 why it was omitted from the messages to OSHA during
9 that investigation.

10 Even, I'm going to argue, misleading
11 statements were made to make it sound like the EPA was
12 just gone after, like, June. And there was nothing
13 else. There were no issues.

14 When in fact, EPA said, "We're going to do
15 a -- you know, a federal inspection based on actual
16 disclosures. We're going to be there."

17 So it's very contrary to the position
18 statement that was filed, which is also, again,
19 another example of pretext.

20 MS. RIECHERT: Right. But the issue is, did
21 you make a complaint and was that complaint the reason
22 that you were let go?

23 And so we will either admit that you made the
24 complaint or not, and then that's just a factual
25 issue. Did you make a complaint? Was that the reason

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1 you were let go?

2 And so if you are saying the complaint you
3 made is the one you made to the EPA, then we can just
4 take that as your fact. And then we will show why you
5 were let go and that whether you made a complaint to
6 the EPA or not was not the reason.

7 So it's a very simple -- as you said, I think
8 during the hearing with the Judge, it's a really
9 simple issue. It's a really simple case. And as I
10 think you said, it would just take less than a week or
11 a week to five days to get it tried. And we agree.
12 It's a very simple case.

13 MS. GJOVIK: Okay. So I'm just going to be
14 clear. Based on the things you're telling me now, and
15 based on the prior initial disclosures, if Apple later
16 decides they want to add some brand-new defense or
17 witness, I'm going to argue it should have been in the
18 initial disclosures and try to fight the introduction
19 of that evidence, the introduction of that witness.

20 Because the position I've been given right
21 now, which you're assuring me is in good faith and
22 what you plan to do, to me sounds unfeasible for an
23 actual -- so we can put a pin in that.

24 We do have a few more things to talk about.

25 So the motion -- yeah, it sounds like you are

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1 set. You're going to oppose my motion, so I will note
2 "Opposed."

3 MS. RIECHERT: Just to be clear, I just got
4 your e-mail this morning. I haven't reviewed it in
5 detail and all the authorities that you cited in it.

6 But we've -- and I understand you're going to
7 file your motion tomorrow. So if we agree to your
8 motion, we'll let you know by tomorrow. And if not,
9 you should go ahead and file your motion.

10 MS. GJOVIK: Okay. I will plan to file at
11 5:00 p.m. Eastern Standard Time tomorrow if I don't
12 hear from you earlier, if that works for you.

13 MS. RIECHERT: Okay.

14 MS. GJOVIK: And then for your motion to
15 dismiss, I also sent a note at the end of that e-mail
16 just reminding, the statutory language is very clear
17 that the CERCLA statute covers all employees and all
18 employers for any proceeding.

19 And the only carve-out you can see when you
20 look at the desk aid and the additional OSHA materials
21 is sometimes public employees do not have coverage
22 depending on it, but it specifically says "all private
23 employers."

24 So I'm arguing -- or I'm interested what
25 Apple's argument is as to why CERCLA does not apply to

Meet and Confer

1 them.

2 MS. RIECHERT: Yeah, so we just disagree with
3 your contention that it applies to all employers and
4 all employees.

5 So I think that you'll see that our position
6 is set forth in our motion to dismiss where we're
7 going to detail all of that.

8 MS. GJOVIK: Okay. Again, not very
9 straightforward or transparent on that. But assume,
10 unless you give me more information that is
11 compelling, that I also oppose that. So we oppose and
12 oppose.

13 And then the next step will be discovery
14 plan. Per the rules, discovery is going to start
15 after this call. And there's definitely a lot of
16 stuff I want to request, but I'm also very familiar
17 with the way Apple sometimes handles discovery in
18 litigation. So I want to work with Apple on this one.

19 I think it might be best if I start with some
20 very targeted requests, you know, stuff that should
21 not be confidential. Should not be complicated. It's
22 probably already on-hand, instead of some kind of
23 broad request.

24 And then from those items, I'm planning on,
25 you know, requesting specific things off of them,

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1 depending on how relative they are, how relevant, all
2 of that.

3 Does Apple have any position on their
4 preferred way?

5 Would they prefer a big bulk request or
6 would you be appreciative if I try to be kind of
7 strategic so there's less burden?

8 MS. RIECHERT: We will definitely be
9 appreciative if you're strategic. Just because,
10 obviously, discovery has to be focused on the issues
11 in this case, which is we have already gone through --
12 you've gone through them. We've gone through them.
13 So we know what the issues in the case are.

14 And so it needs to be super targeted on, did
15 you make a complaint and is that why you were fired.

16 And so as long as you can target those
17 particular issues, we will look at the discovery that
18 you send and we'll respond appropriately.

19 So you're talking about document requests,
20 are you?

21 MS. GJOVIK: Yes. For initial -- I would
22 like to delay my request for depositions until I have
23 a better idea of the evidence through discovery.

24 Again, to be thoughtful of people's time and
25 strategic.

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1 MS. RIECHERT: So we think that it's better
2 that we know what the issues in the case are going to
3 be before we do any of this discovery.

4 So for example, if our motion to dismiss is
5 granted, there's no need for discovery.

6 If your motion to amend is granted, then the
7 topics of the discovery will be much broader than they
8 would be if it's just the claims that were brought
9 before the investigator.

10 So it seems to make sense to us that we delay
11 until we get the issues in the case resolved before
12 doing discovery.

13 Does that make sense to you?

14 MS. GJOVIK: I understand what you're saying,
15 but I do not agree.

16 You know, if we add Clean Air Act and RCRA,
17 we're adding a whole other facility, a different
18 timeframe in addition to the current one. And my
19 argument is it was all together. All that retaliation
20 was about all three of them.

21 So anything related to that investigation
22 they were supposedly doing into my concern, any
23 investigation into me. Any of the weird
24 communications going on with legal and EHS and all
25 those folks, like all of that, I expect to cover all

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1 the categories.

2 Once the -- if my amendment or request is
3 granted, I expect to have additional targeted
4 questions specific to that facility that might not
5 have been included in the Superfund request, probably
6 stuff that occurred before the Superfund stuff started
7 going.

8 I also expect, again, for your motion to
9 dismiss to be denied. You could also -- as he
10 mentioned, the Judge mentioned, you can file that
11 motion at any time.

12 So basically, that would just be saying no
13 discovery at all because we might feel like filing --
14 you know, there's lots of things you could do, and I
15 don't want to pause discovery for that.

16 I've been waiting a very long time for this
17 to finally get going. I'm very excited to get going.
18 And as I mentioned, I want to act in good faith and
19 try to keep things strategic and work with Apple on
20 this one. So I'm excited to get going.

21 MS. RIECHERT: Right. But if the motion to
22 dismiss is granted -- and I know you don't think it
23 will be and we think it will be -- then there will be
24 no need for any discovery.

25 And so why does each side waste time on

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1 discovery on something that may never need to happen?

2 MS. GJOVIK: There is zero legal precedent
3 for your argument for the motion to be dismissed.

4 MS. RIECHERT: And I totally disagree.

5 MS. GJOVIK: I'm very confident that it will
6 not be granted.

7 MS. RIECHERT: Right. But we're confident
8 that it will be granted. So the Judge will decide
9 which of our confidences is best placed.

10 But there's no point in spending time on
11 discovery when, if we're right, the motion is granted,
12 and then there would be no need for discovery.

13 MS. GJOVIK: Again, you could say a lot to
14 drag it out and drag this whole process out. I think,
15 you know, to stick to our schedule and ensure we're
16 ready for the hearing and trial, starting discovery
17 early, there's no real, you know, harm.

18 I assume, again, if I'm doing very strategic
19 small things, this is stuff that's probably already
20 on-hand. It's probably already applicable to other
21 cases anyways. It doesn't seem like a huge burden.

22 And just pausing the basic procedures within
23 the case at any time Apple thinks it wants to file
24 some motion would be incredibly disruptive.

25 So I'm okay, again, like not doing any kind

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1 of broad, big request anyways at the beginning. So
2 I'm going to hold adamant that we stick to the
3 schedule and the rules as published and start our
4 discovery right away.

5 MS. RIECHERT: Okay. Well, our time is up
6 and both of us have other things to talk about.

7 Do you think we've covered the things we need
8 to do? It seems like we covered the things in the
9 Rule 26(f) report. And we'll disagree on discovery.
10 And we disagree so far on the motion to amend.

11 And we'll just let the Judges decide
12 unless -- I'll let you know by tomorrow whether we've
13 changed our mind on your motions.

14 MS. GJOVIK: Okay. You said we have more
15 things to talk about? Did you mean you and me or --

16 MS. RIECHERT: No, I think we covered all the
17 things in the 26(f) report, is what I'm saying.

18 MS. GJOVIK: Okay. So with you disagreeing
19 on discovery, I believe, if you want to pause it, you
20 need to file a motion. Are you planning on filing a
21 motion on that?

22 MS. RIECHERT: I don't know. We'll have to
23 decide that. That's what -- that's the point of our
24 call today, was to find out if that was going to be an
25 issue or not. And it sounds like it is going to be an

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1 issue.

2 And so then we'll have to decide what we want
3 to do about it.

4 MS. GJOVIK: Okay. And again, I want to work
5 cooperatively with Apple on discovery. I know they
6 can get kind of contested. And, you know, I want --
7 there's information I need. So if there's feedback
8 about how to do the narrow request and what kind of
9 formatting.

10 Oh, and then is Apple going to request any
11 discovery from me? I didn't see anything listed that
12 seemed like it would be relevant.

13 MS. RIECHERT: Well, at this time I don't --

14 MS. MANTOAN: I'm sorry. This is --
15 (inaudible).

16 THE REPORTER: I'm sorry, I can't hear you.
17 (Inaudible)

18 MS. RIECHERT: I'm late for my call, but we
19 haven't decided because we don't think there should be
20 any discovery until after the issues are decided.

21 So I don't have any discovery planned right
22 now. But obviously, we'll look at your discovery and
23 then we'll make a decision on what to do about it.

24 MS. GJOVIK: All right. Sounds good. We
25 should probably have a follow-up call after the

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1 motions, assuming nothing is kicked out. I don't
2 think it will be.

3 Thank you for the talk today.

4 MS. RIECHERT: Thanks a lot. Bye.

5

6 (Whereupon, the proceedings adjourned at 11:03 a.m.)

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CERTIFICATE OF REPORTER

I, ANGELA T. KOTT, a Certified Shorthand Reporter, hereby certify that the foregoing proceedings were taken in shorthand by me, at the time and place therein stated, and that the said proceedings were thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: April 2, 2024.



ANGELA T. KOTT, CSR #7811

EXHIBIT D



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**DOCUMENT: PART OF SCARLETT'S EVIDENCE FOR DISTRICT COURT 22CIV01704KCX
SUBMITTED BY SCARLETT FEB 15 2022 AS EVIDENCE AGAINST GJOVIK
(UNKNOWN / UNCLEAR REASONING BY SCARLETT FOR INCLUDING)**

December 20, 2021

VIA EMAIL

Aleksandr L. Felstiner
Levy Ratner
80 Eight Avenue, Floor 8
New York, NY 10011
Email: afelstiner@levyratner.com

Re: Cher Stewart Settlement – Breach

Dear Alek:


As we discussed last week, it is Apple's position that Ms. Stewart has breached the Confidential Settlement Agreement and General Release ("Settlement Agreement") reached between the parties in Case 32-CA-282396. As you are aware, Ms. Stewart indicated a desire to leave Apple and requested severance. Apple negotiated in good faith to facilitate her departure. Apple took Ms. Stewart at her word when entering into this Agreement, with no knowledge that she was upon execution already in breach of her commitments.

Prior to executing the Agreement, and unbeknownst to Apple at the time, Ms. Stewart had already disclosed draft provisions of the Agreement to Nia Impact Capital. Thus, Ms. Stewart breached the Agreement at the time of execution by having already improperly disclosed the parties' negotiations leading to the Agreement in violation of Paragraph 14. She also breached the Agreement at the time of execution by falsely warranting that she had not previously disclosed any of the Agreement terms, provisions or negotiations leading to the Agreement. Apple learned of Ms. Stewart's breach the day after she received the first settlement payment and notified you accordingly. Subsequently, Ms. Stewart publicly admitted to breaching the Agreement, as Reuters reported on November 25, 2021: "Scarlett, who left Apple last week, said she decided to go public with that information this week, in violation of the terms of her settlement with Apple." Since then, Ms. Stewart has continued to breach the Agreement, including, but not limited to, repeatedly disclosing the Agreement's terms, provisions, and amount of the settlement payments. Most recently, she again breached her agreement on December 14, 2021 when she commented on the amount of the settlement on Twitter. The above examples of breach are an illustrative list of Ms. Stewart's breaches and not intended to be exhaustive.

Aleksandr L. Felstiner
December 20, 2021
Page 2

You are aware that the parties, through their respective counsel, mutually drafted Paragraph 4 of the Agreement (Timing of Settlement Payment), which expressly conditioned settlement payments on Ms. Stewart's continued compliance with the Agreement's terms and conditions and that any breach by Ms. Stewart would result in nonpayment by Apple. Given that Ms. Stewart breached the Agreement before any settlement payment was due, Apple was released of any obligation to make continued payments to Ms. Stewart or her attorneys. Notwithstanding Ms. Stewart's continuing breaches, the Agreement continues to be in effect and Apple is preserving its right to seek liquidated damages for each separate breach.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald J. Holland".

Ronald Holland

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

APPLE INC.

and

CHER SCARLETT, an Individual

**Cases 32-CA-282396
32-CA-287038
32-CA-290101**

**AMENDED CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

On October 30, 2024 an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in Cases 32-CA-282396, 32-CA-287038, 32-CA-290101, based on charges filed by Cher Scarlett,¹ an Individual (Charging Party or Scarlett), alleging that Apple, Inc. (Respondent), is engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151, et seq. This Amended Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151, et seq., and Sections 102.15 and 102.17 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1.

(a) The charge in Case 32-CA-282396 was filed by Charging Party on September 1, 2021, and a copy was served on Respondent by U.S. mail on September 2, 2021.

(b) The charge in Case 32-CA-287038 was filed by Charging Party on November 22, 2021, and a copy was served on Respondent by U.S. mail on December 2, 2021.

¹ Cases 32-CA-282396 and 32-CA-287038 were filed under a former name of the Charging Party and therefore is corrected herein.

(c) The charge in case 32-CA-290101 was filed by Charging Party on February 4, 2022, and a copy was served on Respondent by U.S. mail on February 4, 2022.

2.

(a) At all material times, Respondent has been a California corporation with its headquarters located in Cupertino, California (Respondent's facility), and retail facilities located throughout the United States, and is engaged in the development, manufacture, and retail sale of consumer electronics and software and provision of customer service and support for those electronics and software.

(b) In conducting its operations during the 12-month period ending May 31, 2022, a representative period, Respondent, in conducting its operations described above in paragraph 2(a), derived gross revenues in excess of \$500,000.

(c) During the time period described above in paragraph 2(b), Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at its Cupertino, California facility products, goods, and materials valued in excess of \$5,000 directly from points outside the State of California.

3.

At all material times, Respondent has been an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

4.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act or agents of Respondent within the meaning of Section 2(13) of the Act:

Tim Cook	—	Chief Executive Officer
Deirdre O’Brien	—	Senior Vice President
Jeannie Wong	—	Manager
Ali Stapleton	—	Manager/Slack Administrator
Mark Miller	—	Manager
Vu Vo	—	Director of Design for Manufacturing
Peter Mitchell	—	Manager
Meg Richardson	—	Manager
Michael Rennaker	—	Manager

**RESPONDENT VIOLATES SECTION 8(a)(1) OF THE ACT BY
MAINTENAINING AN OVERBROAD RULE**

5.

Since at least May 22, 2021, Respondent has maintained a policy titled, “Sales Incentive Compensation Plan (“SICP”),” which outlines financial incentives for reaching specific sales goals and states, *inter alia*:

- (a) in the footer of each page: “Apple Proprietary and Confidential;” and
- (b) under the section heading “Other Provisions,” “Apple considers this Plan to be confidential and proprietary information.”

**RESPONDENT VIOLATES SECTION 8(a)(1) OF THE ACT BY SELECTIVELY
AND DISPARATELY ENFORCING ITS SLACK² TERMS OF USE POLICY TO
INTERFERE WITH PAY EQUITY DISCUSSIONS**

6.

(a) Since at least June 2, 2021, Respondent has maintained a policy titled, “Terms of Use” (TOU) that governs employees’ use of Slack, which states, *inter alia*:

(i) “Slack is a collaboration and productivity tool provided to [Respondent] users to conduct [Respondent] business. Slack channels are created for the sole purpose of advancing the work, deliverables, or mission of [Respondent] departments and teams.”

(ii) Under the heading “Channel Use,” the TOU further states: “Slack channels for approved [Respondent] Employee clubs and Diversity Network Associations (DNAs) are permitted. Slack channels for activities and hobbies not recognized as [Respondent] Employee clubs or DNAs aren’t permitted and shouldn’t be created.”

(b) About August 31, 2021, Respondent, through Slack Administrator Ali Stapleton, via Slack, enforced its TOU selectively and disparately by denying an employee request to create a Slack channel called #community-pay-equity, stating that Slack was to be used for business purposes only, while permitting other employees to use Slack for non-business purposes.

²Slack is a business communication platform that allows individuals within a company to collaborate in an organized manner via a virtual “workspace.” Within a workspace, Slack organizes conversations into dedicated spaces called “channels.”

**RESPONDENT VIOLATES SECTION 8(a)(1) OF THE ACT BY INTERFERING
WITH EMPLOYEES' SECTION 7 ACTIVITIES BY PROHIBITING WAGE
SURVEYS AND OTHER PROTECTED ACTIVITIES AND BY CREATING AN
IMPRESSION OF SURVEILLANCE OF EMPLOYEES' SECTION 7 ACTIVITIES**

7.

(a) About March 2021, Respondent, by Manager Vu Vo, over a video call, threatened an employee with unspecified reprisals if the employee discussed a performance bonus that the employee had received.

(b) Respondent, through Manager Peter Mitchell:

(i) About May 12, 2021, told an employee not to speak to the press after the employee communicated on social media about the employee's workplace concerns and after the employee was quoted in the press about those workplace concerns.

(ii) About May 13, 2021, told the employee that the employee must notify him (Mitchell) in advance if the employee wishes to speak to the press.

(iii) About July 1, 2021, told an employee that he was upset that the employee had not told him in advance that the employee would be talking to the press about employees' working conditions, including a group concern about remote work.

(c) About July 19, 2021, Respondent, through Employee Relations Representative Meg Richardson:

(i) told an employee to remove the employee's Tweet regarding how to request continued remote work arrangements at Respondent's facility; and

(ii) sought the names of other employees that the employee had spoken with concerning remote work.

(d) About August 10, 2021, Respondent, by Manager Mark Miller, in a telephone call to an employee:

(i) created an impression of surveillance saying that he (Miller) and others in Respondent's senior leadership had seen the employee's posts about pay equity on Slack and that Respondent was monitoring those discussions;

(ii) told the employee not to participate in the wage and pay discussions on Slack or fill out the online wage survey that Scarlett had posted; and

(iii) impliedly threatened the employee with unspecified reprisals if the employee continued to participate in discussions about wages on Slack or participate in Scarlett's online pay equity survey.

(e) About August 15, 2021, Respondent, by Manager Michael Rennaker, in a telephone call, told an employee that Respondent did not want employees talking about wages and/or pay equity issues.

(f) In emails dated August 24, 25, and 30, 2021, Respondent, by Manager Jeannie Wong, refused to meet with employees collectively about their concerns regarding compensation and group concerns regarding data revealed by employee wage surveys and insisted on meeting with employees in individual meetings.

(g) About August 26, 2021, Respondent, by Manager Jeannie Wong, in a WebEx video conference meeting:

(i) interrogated an employee about why and how the employee got involved with Scarlett's pay equity survey and who else was involved; and

(ii) impliedly threatened the employee with unspecified reprisals by warning the employee that Slack was intended for Respondent's business use only and that the employee should be careful with what the employee shared over Slack.

(h) About August or September 2021, Respondent, by Manager Mark Miller, in a video call, impliedly threatened termination and/or other reprisals by telling an employee to track the hours the employee spent on the wage survey project and to engage in protected activities only outside of work hours, and specifically on weekends, in case Respondent tried to discipline or discharge the employee for a drop in performance.

(i) About early-September 2021, Respondent, by Senior Vice President Deirdre O'Brien, in a video posted to Respondent's intranet, told employees to talk to their managers or HR/People Business Partner if they had concerns about their pay.

**RESPONDENT CONSTRUCTIVELY FIRES SCARLETT BY MAKING
CONTINUED EMPLOYMENT CONTINGENT UPON HER CEASING HER
SECTION 7 ACTIVITIES IN VIOLATION OF SECTION 8(a)(1) OF THE ACT**

8.

(a) Since at least May 2021, and continuing to date, Scarlett engaged in concerted activities, with or on behalf of Respondent's other employees for the purposes of mutual aid and protection, by, among other things, engaging in the following conduct:

(i) Scarlett Tweeted, spoke to media reporters, and engaged in Slack discussions about workplace issues including, but not limited to, pay equity and Respondent's remote work policy.

(ii) Scarlett participated in a conversation thread in Respondent's Slack channel called "Women in Software Engineering," where other employees were discussing concerns about sexism and gender discrimination in the workplace.

(iii) In about the summer of 2021, Scarlett helped found the “Apple Too” movement, an effort modeled after the “Me Too” movement,³ to encourage her fellow employees to share stories and create transparency around incidents of discrimination, inequity, racism, and sexism they experienced in the course of their employment with Respondent.

(iv) About August 4, 2021, Scarlett participated in an online pay survey that a fellow employee of Respondent had created.

(v) About August 7, 2021, Scarlett created and posted an online pay equity survey where Respondent’s employees could anonymously share information about their wages, job levels, years of experience, and personal demographics in order to identify potential pay disparities, and then posted the wage survey on her personal Twitter⁴ account, where some of Respondent’s employees followed her.

(vi) About August 7, 2021, Scarlett posted a link to the pay equity survey in one of Respondent’s Slack channels, #talk-benefits, that some of Respondent’s employees had previously attempted to use to discuss pay equity issues and conduct wage surveys.

(vii) About August 24, 2021, Scarlett and other Respondent employees requested a group meeting with Respondent’s management to share group concerns regarding data revealed by the wage surveys.

(viii) About August 26, 2021, Scarlett and other employees showed Respondent’s HR Representative Jeannie Wong a presentation regarding the wage survey’s

³ The “Me Too” movement is an awareness campaign centered on addressing sexual harassment and sexual abuse of women in the workplace that grew to prominence in the fall of 2017.

⁴ “X”, formerly “Twitter” (2006–2023), is an online social media platform and microblogging service that distributes short messages of no more than 280 characters.

methodology and results and the group's finding that there was possible gender-based pay disparity in some of Respondent's departments.

(b) Since at least September 1, 2021, to about November 15, 2021, Respondent made it known that Respondent was conditioning continued employment of Scarlett on her abandoning Section 7 activities by:

- (i) telling employees not to participate in Scarlett's online pay survey;
- (ii) telling employees their participation in Scarlett's online pay survey was not condoned;

- (iii) telling employees that participation in Scarlett's pay survey could lead to demotion and/or harm their careers and/or violate their employment agreements;

- (iv) telling Scarlett's former legal representative that Respondent's executives were having a headache from Scarlett's Tweeting about them and therefore telling Scarlett to stop; and

- (v) repeatedly telling Scarlett to take medical leave and offering her a severance agreement rather than addressing her requests for: a company-wide statement clarifying employees' right to discuss pay, to engage in protected concerted activities, to freely speak to the press about workplace issues, and to access Slack to discuss pay and workplace issues; and for a formal platform for Respondent to receive employee group concerns.

(c) By the conduct described above in paragraph 8(b), Respondent caused the termination of employee Scarlett.

(d) Respondent engaged in the conduct described above in paragraphs 8(b) and (c) because Scarlett engaged in the conduct described above in paragraph 8(a), and to discourage employees from engaging in these or other protected concerted activities.

9.

By the conduct described above in paragraphs 5, 6, 7, and 8, Respondent has been interfering with, restraining and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10.

The unfair labor practices of Respondent described above affect commerce within the meaning of Sections 2(6) and (7) of the Act.

REMEDIES

11.

WHEREFORE, as part of the remedy for the unfair labor practices described above in paragraphs 5 through 8, the General Counsel seeks an Order requiring Respondent to: (1) physically and electronically post the Notice to Employees at all its facilities including, but not limited to, posting on Respondent-sponsored Slack communication channels, intranet portals, and by e-mail; (2) email a copy of the Notice to Employees to all its supervisors and managers; (3) physically and electronically post the Explanation of Employee Rights poster in the same manner as the posting of the Notice to Employees; (4) have a Board Agent conduct a training session for its managers and supervisors on their obligations under the Act, on work time, scheduled so as to ensure the widest possible attendance (by videoconference or in person, at the discretion of the Regional Director); and (5) have a Board Agent conduct a training session for its employees on their rights under the Act, on

work time, scheduled so as to ensure the widest possible attendance (by videoconference or in person, at the discretion of the Regional Director).

WHEREFORE, as part of the remedy for the unfair labor practices described above in paragraph 8 the General Counsel seeks an Order requiring Respondent to: (1) offer employee Scarlett reinstatement to her former job position or, if that job no longer exists, to a substantially equivalent position, without prejudice to Scarlett's seniority or any other rights or privileges previously enjoyed; (2) send a letter to Scarlett apologizing for constructively terminating her, expunge all Respondent's records of such termination, and inform her, in writing, that her termination has been expunged from Respondent's records and will not be used against her in any way; (3) make employee Scarlett whole for all losses incurred as a result of the unfair labor practices described above, including for all pecuniary losses incurred as a result of her unlawful termination; and (4) provide a neutral job reference to all prospective employers with the correct job titles and positions of employee Scarlett.

WHEREFORE, as part of the remedy for the unfair labor practices described above in paragraph 5 the General Counsel seeks an Order requiring Respondent to rescind the rules described in all their forms, or revise them in all their forms, to make clear to employees, in writing, that these rules do not interfere with employees' right to engage in Section 7 activities for mutual aid and protection; to rescind all disciplines or terminations issued to all employees pursuant to the unlawful rules; and to make all employees whole for losses incurred as a result of being suspended or terminated pursuant to the unlawful rules.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amended Consolidated Complaint. The answer must be **received by this office on or before November 14, 2024.**

An answer must be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a Complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely,

the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amended Consolidated Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on June 24, 2025, at 9:00 a.m., at the Oakland Regional Office of the National Labor Relations Board located at 1301 Clay Street, Suite 1510N, Oakland, California 94612, at a conference room to be determined, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Amended Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED AT Oakland, California this 31st day of October 2024.



Christy Kwon
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 1510N
Oakland, CA 94612-5224

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Cases: 32-CA-282396
32-CA-287038
32-CA-290101

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request;

and

- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Tim Cook, Chief Executive Officer
Apple, Inc.
One Apple Parkway
Cupertino, CA 95014
Email: tcook@apple.com
SERVED VIA E-ISSUANCE

Tim Cook, Chief Executive Officer
Apple, Inc.
One Infinite Loop
Cupertino, CA 95014
Email: tcook@apple.com
SERVED VIA E-ISSUANCE

Harry I. Johnson III, Attorney
Morgan, Lewis & Bockius LLP
2049 Century Park East, Suite 700
Los Angeles, CA 90067-3109
Email: harry.johnson@morganlewis.com
SERVED VIA E-ISSUANCE

Brian J. Mahoney, Attorney
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Philadelphia, PA 19103-2921
Email: brian.mahoney@morganlewis.com
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Laurie M. Burgess, Attorney
Burgess Law Offices PC
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SERVED VIA E-ISSUANCE

Cher Scarlett
11115 Champagne Point Rd NE
Kirkland, WA 98034
Email: lburgess@burgess-laborlaw.com
SERVED VIA E-ISSUANCE

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

APPLE INC.

and

CHER SCARLETT, an Individual

**Cases: 32-CA-282396
32-CA-287038
32-CA-290101**

Date: October 31, 2024

**AFFIDAVIT OF SERVICE OF AMENDED CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) upon the persons at the addresses and in the manner indicated below. Persons listed below under "E-Service" have voluntarily consented to receive service electronically, and such service has been effected on the same date indicated above.

Tim Cook, Chief Executive Officer
Apple Inc.
One Apple Parkway
Cupertino, CA 95014
Email: tcook@apple.com
SERVED VIA E-ISSUANCE

Tim Cook, Chief Executive Officer
Apple Inc.
One Infinite Loop
Cupertino, CA 95014
Email: tcook@apple.com
SERVED VIA E-ISSUANCE

Harry I. Johnson III, Attorney
Morgan, Lewis & Bockius LLP
2049 Century Park East, Suite 700
Los Angeles, CA 90067-3109
Email: harry.johnson@morganlewis.com
SERVED VIA E-ISSUANCE

Brian J. Mahoney, Attorney
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Email: brian.mahoney@morganlewis.com
SERVED VIA E-ISSUANCE

Mark L. Stolzenburg, Attorney
Morgan, Lewis & Bockius, LLP
110 North Wacker Drive Suite 2800
Chicago, IL 60606
Email: mark.stolzenburg@morganlewis.com
SERVED VIA E-ISSUANCE

Kelcey J. Phillips, Attorney at Law
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
Email: kelcey.phillips@morganlewis.com
SERVED VIA E-ISSUANCE

EXHIBIT E

RE: status

From: Diangco, Andrea - OSHA <Diangco.Andrea@dol.gov>

To: Ashley Gjovik <ashleymgjovik@protonmail.com>

Date: Wednesday, January 19th, 2022 at 2:00 PM

Ashley,

Thank you for providing the three attachments. I also received the zip folder you sent.

Below are responses to your questions:

- A) Are you able to let me know if Apple has responded yet? And if so, are you able to share their response so I can respond to it if applicable/needed?
Apple has requested an extension to submit their position statement and supporting documentation. Once I receive it, you'll be provided a copy. Then you will have an opportunity to do a rebuttal to respond to Apple's response. You'll have the option to provide a written rebuttal or we can do a rebuttal interview via phone.
- B) Am I able to request anything from Apple (or to you to request from Apple) as part of a discovery-type process?
The OSHA investigation doesn't have a formal discovery process similar to court proceedings. Instead of directly requesting documents from Apple, you can send me a list of items you believe are pertinent to your complaint. It will be reviewed and a determination will be made if the document(s) are necessary for the investigation.

After your complaint has been pending with OSHA for more than 60 days, you have the option of requesting an Expedited Case Process (ECP). ECP allows you to request that OSHA terminate its investigation and issue a determination on your complaint. You will then receive a letter for your appeal rights which enables you to take your complaint directly to an Administrative Law Judge (ALJ). The ALJ procedure has a formal quasi-judicial setting which includes processes such as discovery. Please let me know if you're interested in ECP or would like more information about the process. Note this process is only applicable for your CERCLA and SOX complaints.

Regards,

Andrea Diangco (she/her)
Investigator
Whistleblower Protection Program
U.S. Department of Labor – OSHA

From: Ashley M. Gjovik <ashleymgjovik@protonmail.com>
Sent: Tuesday, January 18, 2022 1:54 AM
To: Diangco, Andrea - OSHA <Diangco.Andrea@dol.gov>
Subject: RE: status

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Hi,

Thank you! Hope you had a nice long weekend.

I'm attaching:

- 1) CERCLA memo v2 (amended & expanded)
- 2) Retaliation & pretext memo v1
- 3) Timeline v5

I'm working on a remedies memo, but maybe it's too early for that. I *think* that's it. Please do let me know if you need anything else from me & I'll be right on it.

Questions:

- A) Are you able to let me know if Apple has responded yet? And if so, are you able to share their response so I can respond to it if applicable/needed?
- B) Am I able to request anything from Apple (or to you to request from Apple) as part of a discovery-type process?

Thank you!

—
Ashley M. Gjøvik, B.S., PMP

Santa Clara University School of Law

Juris Doctor Candidate & Public International Law Certificate Candidate, Class of 2022

Santa Clara University ACLU Club I&D Director & Environmental Law Society Outreach Chair

Human Rights & International Law Author: <https://muckrack.com/ashleygjavik>

ashleygjavik.com | +1`415-964-6272 (Signal.app please)

Sent with [ProtonMail](#) Secure Email.

Original Message

On Thursday, January 13th, 2022 at 8:58 AM, Diangco, Andrea - OSHA <Diangco.Andrea@dol.gov> wrote:

Thank you for the update. I also received your email regarding complaint of unsafe work conditions.

Andrea Diangco (she/her)

Investigator

Whistleblower Protection Program

U.S. Department of Labor – OSHA

From: Ashley M. Gjøvik <ashleymgjavik@protonmail.com>

Sent: Tuesday, January 11, 2022 8:06 PM

To: Diangco, Andrea - OSHA <Diangco.Andrea@dol.gov>

Subject: status

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I'm working on two things for you still.

I'm writing up a memo on the retaliation campaign and pre-text for the termination.

I'm also revising the CERCLA memo to note specific evidence and i'm extending to include events starting in Sept 2020 with Apple legal about another Superfund site that I think may have been relevant to all this.

Law school started up again & I'm swamped, but my goal is to get you both these by next Monday.

If you need anything else from me, please let me know!

—
Ashley M. Gjøvik, B.S., PMP

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RE: status

From: Diangco, Andrea - OSHA <Diangco.Andrea@dol.gov>

To: Ashley Gjovik <ashleymgjovik@protonmail.com>

Date: Monday, January 24th, 2022 at 3:51 PM

Apple is being represented by Orrick and their attorneys are Kathryn Manotoan and Jessica Perry.

Apple has requested an extension until February 9, 2022. Please keep in mind while there are timelines, investigations vary in length of time depending on the complexity of the case.

The information you have provided is being reviewed. I will follow up if there any questions regarding the information.

The investigation is still in the initial phase as OSHA is still waiting to receive Apple's position statement.

Andrea Diangco (she/her)

Investigator

Whistleblower Protection Program

U.S. Department of Labor – OSHA

From: Ashley M. Gjovik <ashleymgjovik@protonmail.com>

Sent: Wednesday, January 19, 2022 2:29 PM

To: Diangco, Andrea - OSHA <Diangco.Andrea@dol.gov>

Subject: RE: status

CAUTION - The sender of this message is external to the DOL network. Please use care when clicking on links and responding with sensitive information. Send suspicious email to spam@dol.gov.

Hi Andrea! Thank you!

If Apple uses the same position statement they used for the NLRB case, then my retaliation/pretext memo should cover most of their response, but I'll look forward to seeing their formal US DOL response and responding as needed.

Are you able to share which lawyer(s) are representing Apple for this?

Also I see there's a deadline for for investigations to complete. Are you able to share how long of an extension Apple asked for? And share if there's a point where the timer runs out and its default judgment if Apple's lawyers don't respond?

Thank you for the info on evidence and the ALJ process. I'll think through for evidence -- but I think I want to see the OSHA investigation process through, at least for now. I'm sure Apple will appeal to the ALJs anyways if you decide in my favor so we can save that for later.

Also can you please confirm that you / your team are reading through the memos I send to review and consider next to Apple's statements? Is there anything else I can do / provide to ensure OSHA WPP understand my position and the events? Will y'all send any follow up questions so i can answer/expand if needed?

Can you please also confirm the stage we're in? It sounds like i already met prima facie with evidence for all four statutes (i participated in protected activities under the three statutes, Apple did adverse actions to me, and there's enough evidence to infer causation that the adverse actions were due to the protected activities). if so, it sounds like Apple now needs to offer you some sort of non-discriminatory, legitimate reason(s) for all the adverse actions i noted and provide enough evidence to support that "legitimate" reason was the primary/only reason for the adverse actions

- yeah? My pretext memo tried to counter that already, showing their reason is pretext, and that contributing factor (SOX/CERCLA) & but for (OSHA) causation is met for the discriminatory factor leading to the adverse actions.

Hope all that makes sense. Thanks!

Thank you!

—
Ashley M. Gjøvik, B.S., PMP

Santa Clara University School of Law

Juris Doctor Candidate & Public International Law Certificate Candidate, Class of 2022

Santa Clara University ACLU Club I&D Director & Environmental Law Society Outreach Chair

ashleygjovik.com | +1`415-964-6272

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Sent with [ProtonMail](#) Secure Email.

U.S. Department of Labor

Occupational Safety and Health Administration
San Francisco Federal Building
90 7th Street, Suite 2650
San Francisco, CA 94103



Via UPS

December 10, 2021

Human Resources/Legal Department
Apple Inc.
One Apple Park Way
Cupertino, CA 95014

Complainant(s): Ashley Gjovik
Respondent(s): Apple Inc.
Case Number: Apple Inc./Gjovik/9-3290-22-051
Law/Statute 1: Section 11(c) of the Occupational Safety and Health Act (OSHA), 29 U.S.C. §660
Law/Statute 2: Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §9610
Law/Statute 3: Sarbanes-Oxley Act (SOX), 18 U.S.C.A. §1514A
Regulation 1: OSHA 11(c) Complaint Procedures: 29 CFR Part 1977
Regulation 2: EPA Complaint Procedures: 29 CFR Part 24
Regulation 3: SOX Complaint Procedures: 29 CFR Part 1980

Dear Sir/Madam:

This office has received a complaint filed by the above-named Complainant(s) against the above-named Respondent(s). The complaint alleges retaliatory employment practices in violation of the Law(s)/Statute(s) cited above. A copy of the complaint allegation is enclosed.

The Occupational Safety and Health Administration's Whistleblower Protection Program (WPP) is responsible for enforcing the anti-retaliation provisions of the law(s) cited above and will conduct its investigation following the procedures outlined in the regulation(s) cited above. You may obtain a copy of the law(s) and regulation(s) at: www.whistleblowers.gov. Upon request, a printed copy of these materials will be mailed to you.

You have the right to be represented in this matter. If you choose to have a lawyer or someone else represent you, please have that person complete and email to the investigator the enclosed Designation of Representative form.

WPP will send most, if not all, future correspondence by email - this includes final disposition letters that include time sensitive appeal rights.

WPP policy encourages the voluntary resolution of complaints. If you are interested in settlement discussions and/or Alternative Dispute Resolution (ADR), please contact the assigned investigator.

This letter will confirm that Respondent(s) are responsible for retaining and maintaining all records, documents, computer files, e-mail, correspondence, memoranda, reports, notes, tools, equipment, objects, photographs, videotapes, digital video, tape recordings, digital recordings, voicemails and

recordings of radio and telephone conversations, and telephone and cellular telephone records, and all other evidence relating to the above-captioned case. The failure of Respondent(s) to maintain and retain such materials may result in court-imposed sanctions. As a party responsible for preserving relevant evidence, you may wish to instruct all individuals with potentially relevant documentation to affirmatively preserve and retain such documentation. You also may wish to suspend any routine document retention/destruction policy that you may have, including email retention policies. Please provide **within 20 days** a written account of the facts and a statement of your position with respect to the allegation that you have retaliated against Complainant in violation of the law. Please note that a full and complete initial response, supported by appropriate documentation, may help to achieve early resolution of this matter. Your cooperation is critical so that all facts of the case may be considered.

Please send documents to WPP electronically, if possible, using the investigator's email address below and also send a copy to all named parties listed below:

ASSIGNED INVESTIGATOR:

(b) (7)(C)

Whistleblower Protection Program
U.S. Department of Labor, OSHA
300 Fifth Avenue, Room 1280
Seattle, Washington 98104

(b) (7)(C)

COMPLAINANT(S):

Ashley Gjovik

Santa Clara, CA 95050
ashleymgjovik@protonmail.com

If the information provided contains personal, identifiable information about individuals other than Complainant, or business sensitive information, please remove this information before sending it to Complainant.

Please be advised that any request of confidential or proprietary privilege in your submissions to WPP must specifically identify each such privilege for which protection from disclosure under the Freedom of Information Act (FOIA) is made.

All communications and submissions should be made to the investigator, identified above.

Sincerely,

(b) (7)(C)

Digitally signed by (b) (7)(C)
(b) (7)(C)
Date: 2021.12.10 09:46:55
-08'00'

For Ryan Himes
Assistant Regional Administrator

Enclosures: (1) Designation of Representative Form
(2) Alternative Dispute Resolution FAQ
(3) Copy of Complaint Allegation

EXHIBIT F

Form NLRB-4701
(1-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

APPLE, INC. <p style="text-align: center;">Employer.</p> <p style="text-align: center;">And</p> ASHLEY GJOVIK <p style="text-align: center;">Charging Party.</p>	CASE NO. 32-CA-282142
--	-----------------------

☒ REGIONAL DIRECTOR
 Region 32
 1301 Clay Street, Room 300N
 Oakland, CA 94612-5211

☐ EXECUTIVE SECRETARY
 NATIONAL LABOR RELATIONS BOARD


☐ GENERAL COUNSEL
 NATIONAL LABOR RELATIONS BOARD

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE APPLE, INC. IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

- ☒ REPRESENTATIVE IS AN ATTORNEY
- ☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SECTIONS 102.14 AND 102.113 OF THE BOARD'S RULES AND REGULATIONS.

(REPRESENTATIVE INFORMATION)

NAME: <u>Ronald J. Holland, Christopher Foster, Syed H. Mannan</u>
MAILING ADDRESS: <u>415 Mission Street, Suite 5600, San Francisco, California 94105</u>
E-MAIL ADDRESS: <u>rjholland@mwe.com; cfoster@mwe.com; smannan@mwe.com</u>
OFFICE TELEPHONE NUMBER: <u>628-218-3800</u>
CELL PHONE NUMBER: <u>415-999-4833 (Holland)</u> FAX: <u>628-877-0107</u>
SIGNATURE:  (Please sign in ink.)
DATE: <u>August 31, 2021</u>



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
1301 Clay St Ste 300N
Oakland, CA 94612-5224

Agency Website: www.nlr.gov
Telephone: (510)637-3300
Fax: (510)637-3315



Download
NLRB
Mobile App

August 30, 2021

Apple Inc.
One Apple Park Way
Cupertino CA 95014

Re: Apple Inc.
Case 32-CA-282142

Dear Sir or Madam:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Field Examiner ALEXANDER M. HAJDUK whose telephone number is (510)671-3024. If this Board agent is not available, you may contact Supervisory Attorney CATHERINE VENTOLA whose telephone number is (510)671-3049.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not

Apple Inc.
Case 32-CA-282142

- 2 -

enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor requests to limit our use of position statements or evidence. Specifically, any material you submit may be introduced as evidence at a hearing before an administrative law judge regardless of claims of confidentiality. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Further, the Freedom of Information Act may require that we disclose position statements or evidence in closed cases upon request, unless an exemption applies, such as those protecting confidential financial information or personal privacy interests.

Preservation of all Potential Evidence: Please be mindful of your obligation to preserve all relevant documents and electronically stored information (ESI) in this case, and to take all steps necessary to avoid the inadvertent loss of information in your possession, custody or control. Relevant information includes, but is not limited to, paper documents and all ESI (e.g. SMS text messages, electronic documents, emails, and any data created by proprietary software tools) related to the above-captioned case.

Prohibition on Recording Affidavit Interviews: It is the policy of the General Counsel to prohibit affiants from recording the interview conducted by Board agents when subscribing Agency affidavits. Such recordings may impede the Agency's ability to safeguard the confidentiality of the affidavit itself, protect the privacy of the affiant and potentially compromise the integrity of the Region's investigation.

Correspondence: All documents submitted to the Region regarding your case MUST be filed through the Agency's website, www.nlr.gov. This includes all formal pleadings, briefs, as well as affidavits, documentary evidence, and position statements. The Agency requests all evidence submitted electronically to be in the form it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format).

If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the charge. If you cannot e-file your documents, you must provide a statement explaining why you do not have access to the means for filing electronically or why filing electronically would impose an undue burden.

Apple Inc.
Case 32-CA-282142

- 3 -

In addition, this Region will be issuing case-related correspondence and documents, including complaints, compliance specifications, dismissal letters, deferral letters, and withdrawal letters, electronically to the email address you provide. Please ensure that you receive important case-related correspondence, please ensure that the Board Agent assigned to your case has your preferred email address. These steps will ensure that you receive correspondence faster and at a significantly lower cost to the taxpayer. If there is some reason you are unable to receive correspondence via email, please contact the agent assigned to your case to discuss the circumstances that prevent you from using email.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlrb.gov or from an NLRB office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Valerie Hardy-Mahoney".

VALERIE HARDY-MAHONEY
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

APPLE INC.

Charged Party

and

ASHLEY MARIE GJOVIK

Charging Party

Case 32-CA-282142

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on August 30, 2021, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

Apple Inc.
One Apple Park Way
Cupertino CA 95014

August 30, 2021

Date

Caroline Barker, Designated Agent of NLRB

Name

/s/ Caroline Barker

Signature

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

32-CA-282142

Date Filed

08/26/2021**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer Apple Inc.	b. Tel. No. (408) 996-1010
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) One Apple Park Way CA Cupertino 95014	e. Employer Representative
	g. e-Mail
	h. Number of workers employed 200
i. Type of Establishment (factory, mine, wholesaler, etc.) Computer Hardware	j. Identify principal product or service
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 1 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) --See additional page--	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Ashley Marie Gjovik Title:	
4a. Address (Street and number, city, state, and ZIP code) 1050 Benton Street #2310 CA Santa Clara 95050	4b. Tel. No. [REDACTED] 4c. Cell No. 4d. Fax No. 4e. e-Mail ashleygjovik@icloud.com
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Ashley Marie Gjovik (signature of representative or person making charge) Title: (Print/type name and title or office, if any) Address [REDACTED] 08/26/2021 06:48:23 PM (date)	
Tel. No. [REDACTED] Office, if any, Cell No. Fax No. e-Mail ashleygjovik@icloud.com	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

32-CA-282142 08/26/2021**Basis of the Charge****8(a)(1)**

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, discussing wages, hours, or other terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
Ashley Gjovik	Forced on paid admin leave	08/04/2021
Ashley Gjovik	Substantial increase in workload & unfavorable work	07/15/2021
Ashley Gjovik	Reduction of supervisory responsibilities	05/06/2021
Ashley Gjovik	Job reassignment	05/06/2021
Ashley Gjovik	employee feedback "warning" from manager	03/22/2021
Ashley Gjovik	Retaliatory, nonconsensual ER investigation	04/09/2021
Ashley Gjovik	Constructive term; fail to resolve hostile wk env	04/29/2021
Ashley Gjovik	ER shared my ID with sexual harasser w/out consent	05/20/2021
Ashley Gjovik	Manager insists I must return to unsafe work env	06/21/2021
Ashley Gjovik	Harassment from manager	06/28/2021
Ashley Gjovik	Forced 2 submit ADA request due to unsafe work env	07/02/2021
Ashley Gjovik	Manager refuses to consider remote work	06/21/2021
Ashley Gjovik	Withholding of work	07/28/2021

8(a)(1)

Within the previous six months, the Employer disciplined or retaliated against an employee(s) because the employee(s) engaged in protected concerted activities by, inter alia, protesting terms and conditions of employment and in order to discourage employees from engaging in protected concerted activities.

Name of employee disciplined/retaliated against	Type of discipline/retaliation	Approximate date of discipline/retaliation
Ashley Gjovik	Forced on paid admin leave	08/04/2021
Ashley Gjovik	Substantial increase in workload & unfavorable work	07/15/2021
Ashley Gjovik	Reduction of supervisory responsibilities	05/06/2021
Ashley Gjovik	Job reassignment	05/06/2021
Ashley Gjovik	employee feedback "warning" from manager	03/22/2021

Ashley Gjovik	Retaliatory, nonconsensual ER investigation	04/09/2021
Ashley Gjovik	Constructive term; fail to resolve hostile wk env	04/29/2021
Ashley Gjovik	ER shared my ID with sexual harasser w/out consent	05/20/2021
Ashley Gjovik	Manager insists I must return to unsafe work env	06/21/2021
Ashley Gjovik	Harassment from manager	06/28/2021
Ashley Gjovik	Forced 2 submit ADA request due to unsafe work env	07/02/2021
Ashley Gjovik	Manager refuses to consider remote work	06/21/2021
Ashley Gjovik	Withholding of work	07/28/2021

8(a)(1)

Within the previous six-months, the Employer has interfered with, restrained, and coerced its employees in the exercise of rights protected by Section 7 of the Act by maintaining work rules that prohibit employees from discussing wages, hours, or other terms or conditions of employment.

U.S. Department of Labor

Occupational Safety and Health Administration
 San Francisco Federal Building
 90 7th Street, Suite 2650
 San Francisco, CA 94103




DESIGNATION of REPRESENTATIVE FORM

Please Complete The Information In The Boxes Below. Use Blue Or Black Ink.

Email or Fax This Form To The Assigned Investigator As Soon As Possible

Re: Apple Inc./Gjovik/9-3290-22-051

The undersigned is the authorized representative of the named party below in the above-captioned matter.

Party's Name (Type or print in the box below)	Representative's Name (Type or print in the box below)
Apple Inc.	Jessica R. Perry; Kathryn G. Mantoan
Representative's Signature (Sign below)	Street Address or P.O. Box (Type or print in the box below)
	1000 Marsh Road
Date (Type or print in the box below)	City, State, ZIP (Type or print in the box below)
1/7/2022	Menlo Park, CA 94025
Telephone (Type or print in the box below)	FAX (Type or print in the box below)
(650) 614-7400	(650) 614-7401

E-mail Address (Type or print in the box below)

jperry@orrick.com; kmantoan@orrick.com

OSHA will email all correspondence including the Secretary's Findings at the conclusion of this investigation.

Petition: Jan 31 2022

Order: March 1 2022

Reverse of Order: Sept 26 2022

PETITION FOUND TO BE MERITLESS

FILED
KING COUNTY, WASHINGTON

NOV 14 2022

SEA
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON
IN AND FOR THE COUNTY OF KING

CHER SWAN SCARLETT,
Petitioner/Respondent

v.

ASHLEY MARIE GJOVIK,
Respondent/Appellant

NO. 22-2-03849-7 SEA

MANDATE OF SUPERIOR COURT
ON RALJ APPEAL

Court of Limited Jurisdiction
No(s). 22CIV01704KCX

I. BASIS

Pursuant to RALJ 9.2(c) and (d), the Clerk of the Superior Court shall transmit to the Court of Limited Jurisdiction and to all parties a mandate, which is the written notification of the Superior Court decision on an RALJ Appeal. The notification shall include as part of the final judgment, a summary of expenses allowed as costs pursuant to the RALJ 9.3(a),(c), and (f). The costs listed below shall be collected by the Clerk of the Court of Limited Jurisdiction. When the costs awarded include the Superior Court filing fee, it shall be collected by the Clerk of the Court of Limited Jurisdiction and forwarded to the Superior Court Clerk.

II. NOTIFICATION

Therefore, this is to certify that the order of the **King County Superior Court** of the State of Washington, filed on **September 26, 2022**, became the decision terminating review of this court in the above-entitled case. This cause is mandated to the **King County District Court, East Division, Redmond Courthouse**, from which the appeal was taken, for further proceeding in accordance with the decision. A copy of the decision is attached.

III. DECISION

The decision of the ☒ SUPERIOR COURT ☐ COURT OF APPEALS ☐ SUPREME COURT:

A. ☐ Affirms ☒ Reverses ☐ Modifies ☐ Dismisses ☐ Denies ☐ Remands

B. The appeal was heard in Superior Court before the Honorable **Andrea Robertson**.

C. This Matter is remanded to the Court of Limited Jurisdiction.



KING COUNTY DISTRICT COURT REQUEST FOR COURT RECORD

FILED

MAR 04 2022

KCDC - East Division
Redmond

Requestor's Information

Name:	<u>RICHARD KAHNENBERGER</u>
Agency/Company:	<u>WOMEN LEAD</u>
Address:	<u>2225 4TH AVE</u>
State, City, Zip Code:	<u>SEATTLE 98121</u>
Phone:	<u>206 374-0100</u>
Email:	

Case Number:

Full names of Parties.

Plaintiff:	
Defendant:	

Fees

Certified Copies	\$5.00 to certify the first page of the document. \$1.00 per each additional page.
Regular Copies	\$0.25 per page if it is an electronic document. \$0.50 per page if it is not an electronic document.
Copy of Hearing	\$10 per CD or Thumb Drive

Recording of Hearing

Date	Time	Courtroom	Certified Copies?
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Request for Document(s)

Name of Document:	Certified Copies?
1. <u>Court ordered. Protection order</u>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	<input type="checkbox"/> Yes <input type="checkbox"/> No

* Add an additional sheet for more documents.

Dated: 03/04/2022

Requester's Signature

You may submit your request in person via fax (206-205-0450), or email.

kcdc.webmaster@kingcounty.gov.

For additional information contact: 206-205-9200.

Internal Use Only:

Amount Due: \$ 1.00 Payment Received: ☒ Yes ☐ No

Clerk initials ETC

**FILED**

APR 06 2022

KCDC - East Division
Redmond**KING COUNTY DISTRICT COURT
REQUEST FOR COURT RECORD****Requestor's Information**

Name: Scott Bride
Agency/Company: McDermott Will & Emery LLP
Address: 500 N. Capitol St. NW
State, City, Zip Code: Washington, DC 20001
Phone: (202) 756-8467
Email: sbride@mwe.com

Case Number: 22 CIV 01704 KCX
Full names of Parties.
Plaintiff: Cher Swan Scarlett
Defendant: Ashlie Marie Giovik

Fees

Certified Copies	\$5.00 to certify the first page of the document. \$1.00 per each additional page.
Regular Copies	\$0.25 per page if it is an electronic document. \$0.50 per page if it is not an electronic document.
Copy of Hearing	\$10 per CD or Thumb Drive

Recording of Hearing

Date	Time	Courtroom	Certified Copies?
3/1/2022		East Division, Redmond	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2/15/2022		East Division, Redmond	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2/1/2022		East Division, Redmond	No

Request for Document(s)

Name of Document:	Certified Copies?
1.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	<input type="checkbox"/> Yes <input type="checkbox"/> No

*Add an additional sheet for more documents.

Dated: April 5, 2022

Scott Bride

Requester's Signature

You may submit your request in person via fax, or email. kcdc.webmaster@kingcounty.gov.
For additional information contact: 206-205-9200.

Internal Use Only:Amount Due: \$ 10.00 Payment Received: ☒ Yes ☐ No

Clerk initials ETC

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Case Search Results

Apple, Inc.

[E-File](#) [Follow](#)

Case Number: 32-CA-282142

Date Filed: 08/26/2021

Status: Open

Location: Sunnyvale, CA

Region Assigned: Region 32, Oakland, California

Docket Activity

Items per page

Date	Document	Issued/Filed By
04/04/2022	Amended Charge Letter*	NLRB - GC
04/04/2022	Amended Charge Letter*	NLRB - GC
04/01/2022	Signed Amended Charge Against Employer*	Charging Party
08/30/2021	Initial Letter to Charged Party*	NLRB - GC
08/30/2021	Initial Letter to Charging Party*	NLRB - GC
08/26/2021	Signed Charge Against Employer*	Charging Party

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our [FOIA Branch](#).

FOIA Records

[NLRB-2021-001319](#)
[NLRB-2021-001318](#)

Related Documents

Related Documents data is not available.

Allegations

- 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
- 8(a)(1) Concerted Activities (Retaliation, Discharge, Discipline)

Participants

Participant	Address	Phone
Charged Party / Respondent Legal Representative Foster, Christopher McDermott Will & Emery LLP	415 Mission Street, Suite 5600 San Francisco, CA 94105	(628)218-3826
Charged Party / Respondent Legal Representative Holland, Ronald McDermott Will & Emery LLP	415 Mission Street, Suite 5600 San Francisco, CA 94105-2533	(415)590-5120
Charged Party / Respondent Legal Representative Mannan, Syed McDermott Will & Emery LLP	415 Mission Street Suite 5600 San Francisco, CA 94105	(628)218-3804
Charged Party / Respondent Employer Apple, Inc.	Cupertino, CA 95014	

Charging Party
Individual

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Case Search Results

Apple, Inc.

[E-File](#) [Follow](#)

Case Number: 32-CA-283161

Location: Sunnyvale, CA

Date Filed: 09/16/2021

Region Assigned: Region 32, Oakland, California

Status: Open

Docket Activity

Items per page 10

Date	Document	Issued/Filed By
09/20/2021	Initial Letter to Charged Party*	NLRB - GC
09/16/2021	Signed Charge Against Employer*	Charging Party

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our [FOIA Branch](#).

FOIA Records

[NLRB-2021-001374](#)

Related Documents

Related Documents data is not available.

Allegations

- 8(a)(3) Discharge (Including Layoff and Refusal to Hire (not salting))
- 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)

Participants

Participant	Address	Phone
Charged Party / Respondent Legal Representative Foster, Christopher McDermott Will & Emery LLP	415 Mission Street, Suite 5600 San Francisco, CA 94105	(628)218-3826
Charged Party / Respondent Legal Representative Holland, Ronald McDermott Will & Emery LLP	415 Mission Street, Suite 5600 San Francisco, CA 94105-2533	(415)590-5120
Charged Party / Respondent Legal Representative Mannan, Syed McDermott Will & Emery LLP	415 Mission Street Suite 5600 San Francisco, CA 94105	(628)218-3804
Charged Party / Respondent Employer Apple, Inc.	Cupertino, CA 95014	

Charging Party
Individual

Related Cases

Related Cases data is not available.

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Case Search Results

Apple, Inc.

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Case Number: 32-CA-288816

Location: Cupertino, CA

Date Filed: 01/10/2022

Region Assigned: Region 32, Oakland, California

Status: Open

Docket Activity

Items per page 10

Date	Document	Issued/Filed By
01/12/2022	Initial Letter to Charging Party*	NLRB - GC
01/12/2022	Initial Letter to Charged Party*	NLRB - GC
01/10/2022	Signed Charge Against Employer*	Charging Party

The Docket Activity list does not reflect all actions in this case.

* This document may require redactions before it can be viewed. To obtain a copy, please file a request through our [FOIA Branch](#).

FOIA Records

[NLRB-2022-000532](#)

Related Documents

Related Documents data is not available.

Allegations

- 8(a)(1) Coercive Statements (Threats, Promises of Benefits, etc.)
- 8(a)(1) Coercive Actions (Surveillance, etc)
- 8(a)(4) Discipline

Participants

Participant	Address	Phone
Charged Party / Respondent Legal Representative Holland, Ronald McDermott Will & Emory LLP	415 Mission St Ste 5600 San Francisco, CA 94105-2616	(628)218-3829
Charged Party / Respondent Employer Apple, Inc.	Cupertino, CA 95014	

Charging Party
Individual

Related Cases

Related Cases data is not available.

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- [Case Search](#)
- [Contact Us](#)
- [Frequently Asked Questions](#)

GJOVIK LEGAL FILING IN SUPERIOR COURT APPEAL

v. EXHIBIT E: Apple Legal Memo about Messages between Petitioner & Gjovik



Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
+1 650 614 7400
orrick.com

Re: Ashley Gjovik v. Apple Inc., Case No. 9-3290-22-051

E. Ms. Gjovik Subsequently Admitted That She Disclosed Apple's Confidential Information.

On September 15, 2021, a different Apple employee made another report to the Business Conduct Helpline that Ms. Gjovik had publicly disclosed information about the Alpha study. The employee attached screenshots of text messages they had exchanged with Ms. Gjovik dated August 20, 2021. In the text messages, *Ms. Gjovik admitted to disclosing confidential information* about the Alpha study to Zoe Schiffer, a reporter from The Verge:

I'm helping Zoe with the privacy article. I gave her [Alpha] details because that bothers me too ...
I'm even letting her include a few pics from [Alpha].

As discussed above, Ms. Gjovik's very involvement with the Alpha study constitutes confidential information, as do any details about the study or photos or other documents that are the product of it.⁷ Apple's subsequent confirmation that she admitted to disclosing confidential information publicly and intentionally further justifies Apple's termination decision.

F. Ms. Gjovik Made Other Various Claims Apple Has Diligently Investigated.

1. Apple Investigated Ms. Gjovik's Safety Concerns And Repeatedly Encouraged Her to Raise Them.

Beginning in March 2021, Ms. Gjovik raised various concerns about a vapor intrusion study in the Stewart 1 building in which she worked. In response, Apple met with Ms. Gjovik at least seven times to provide her with numerous reports per her requests, encouraged her to report any further concerns she had to Apple's

⁶ Zoe Schiffer, *Apple Cares About Privacy, Unless You Work at Apple*, The Verge (Aug. 30, 2021), <https://www.theverge.com/22648265/apple-employee-privacy-icloud-id>.

4161-3255-5828

[^] Note: Petitioner is not even directly named

– PAGE 22 –

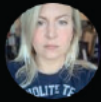
EXHIBIT G

From: (b) (7)(C)
To: (b) (7)(C)
Subject: Re: Important witness information regarding case #9-3290-22-051
Date: Friday, May 12, 2023 11:35:07 AM
Attachments: [Screen Shot 2023-05-10 at 9.03.44 PM.png](#)

CAUTION: This email originated from outside of the Department of Labor. Do not click (select) links or open attachments unless you recognize the sender and know the content is safe. Report suspicious emails through the "Report Phishing" button on your email toolbar.

Sorry, I missed one!

(b) (7)(C)



Ashley M. Gjovik

@ashleygjovik

I still love #Apple products & brand. I devoted nearly 7 years & much blood/sweat/tears ensuring Apple's products are exceptional. However, Apple the corporation needs a reckoning. Apple's policy of "secrecy" should not shield it from public scrutiny about human rights & dignity.

Working at Apple in "normal" times, I walked in circles around their glass-walled panopticon, only able to badge into select lockdowns (a constant reminder that Apple has absolute control over my resources and access), and was immersed in a culture where it is implicitly forbidden to critique Apple policies or even speak openly to your coworkers with concerns about your employment & work conditions, lest you upset the cronyism, ex-CIA/ex-FBI security teams, and other "powers that be." I realize now that during those times, I didn't question a lot of things that I should have. Not just the abuse I suffered, but also the constant invasion of privacy — and perhaps those two things are linked.

There seems to be limitless ways Apple can access employee data and monitor us. I recently shared how violating it felt for Apple to demand to copy & permanently store my nudes for completely unrelated litigation. After the public outcry, I questioned other policies & actions Apple had taken. The internal "Glimmer" app had always troubled me, but I never voiced that concern, because inside we don't question the way things are or what we're asked to do. But now, in the light of day, considering everything Apple's already done to me, this app, the photos & data it gathers, and how little we know about what it does with all of that — is deeply troubling and I felt compelled to make it public. Apple's policy of "secrecy" should not shield it from public scrutiny about human rights & dignity.

11:56 AM · Aug 30, 2021

8 Retweets 1 Quote 35 Likes 1 Bookmark

On May 12, 2023, at 11:23 AM, (b) (7)(C) wrote:

Hello (b) (7)(C),

I again apologize for the cold email, but in document house cleaning, I found documents material to Ms. Gjovik's case with DOL.

As I said previously, Ms. Gjovik's exit plan was planned far in advance, before any action she took in seeking to find whistleblower protection to intentionally get fired or leverage a settlement.

Ms. Gjovik had informed [REDACTED] she had wanted to leave Apple in 2020 and started talking to lawyers in January of 2021, which is proven by the messages she sent [REDACTED] in the screenshot below. Also shows Ms. Gjovik's clear motive for a settlement and refusal to engage in collective action.



<ashley-response-plan-nda.jpg><ashley-no-coalition.jpg><ashley-wants-to-use-stories-for-settlement.jpg><Ashley-Jan-Feb.jpg>
<Screen Shot 2023-05-12 at 11.03.00 AM.png><Screen Shot 2023-05-12 at 11.01.53 AM.png><Screen Shot 2023-05-12 at 11.01.32 AM.png><Screen Shot 2023-05-12 at 10.59.54 AM.png><paid-exit-request.jpg>

**U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration**

Report of Investigation

December 11, 2023

TO: Megan Eldridge, Supervisory Investigator

FROM:

(b) (7)(C)

CASE: Apple/Gjovik/9-3290-22-051

STATUTE(S): SOX, CERCLA, OSHA 11(c)

Complainant 1

Ashley Gjovik

[REDACTED]

Complainant 1 Representative

None

Respondent 1

Apple Inc.
1 Apple Park Way
Cupertino, CA 95014

Respondent 1 Representative

Jessica R. Perry
Kathryn G. Mantoan
1000 Marsh Road
Menlo Park, CA 94025
650-614-7400
jperry@orrick.com
kmantoan@orrick.com

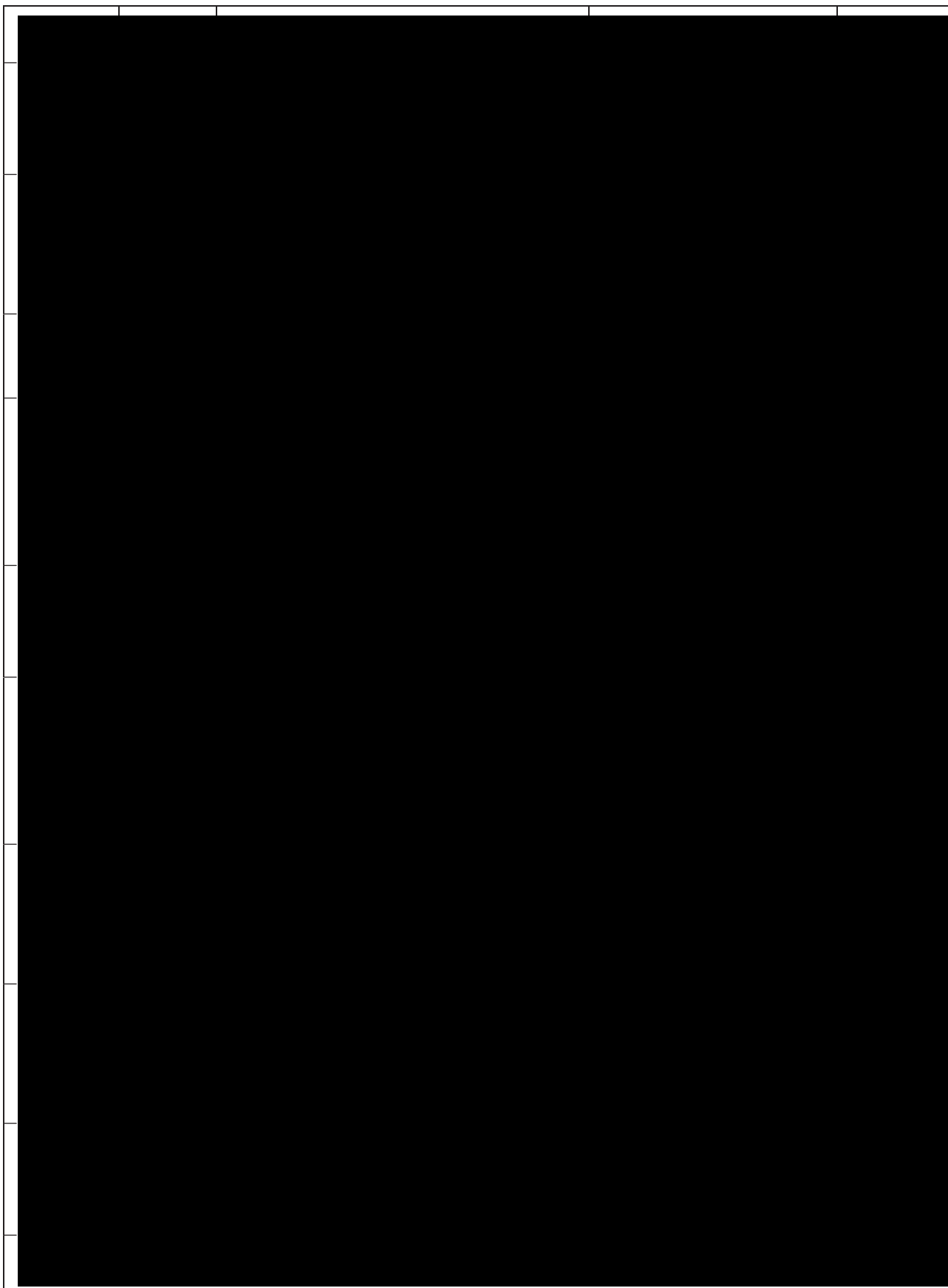
Ashley Gjovik	Sr. Engineer Program Manager	See above.	No
(b) (7)(C)			

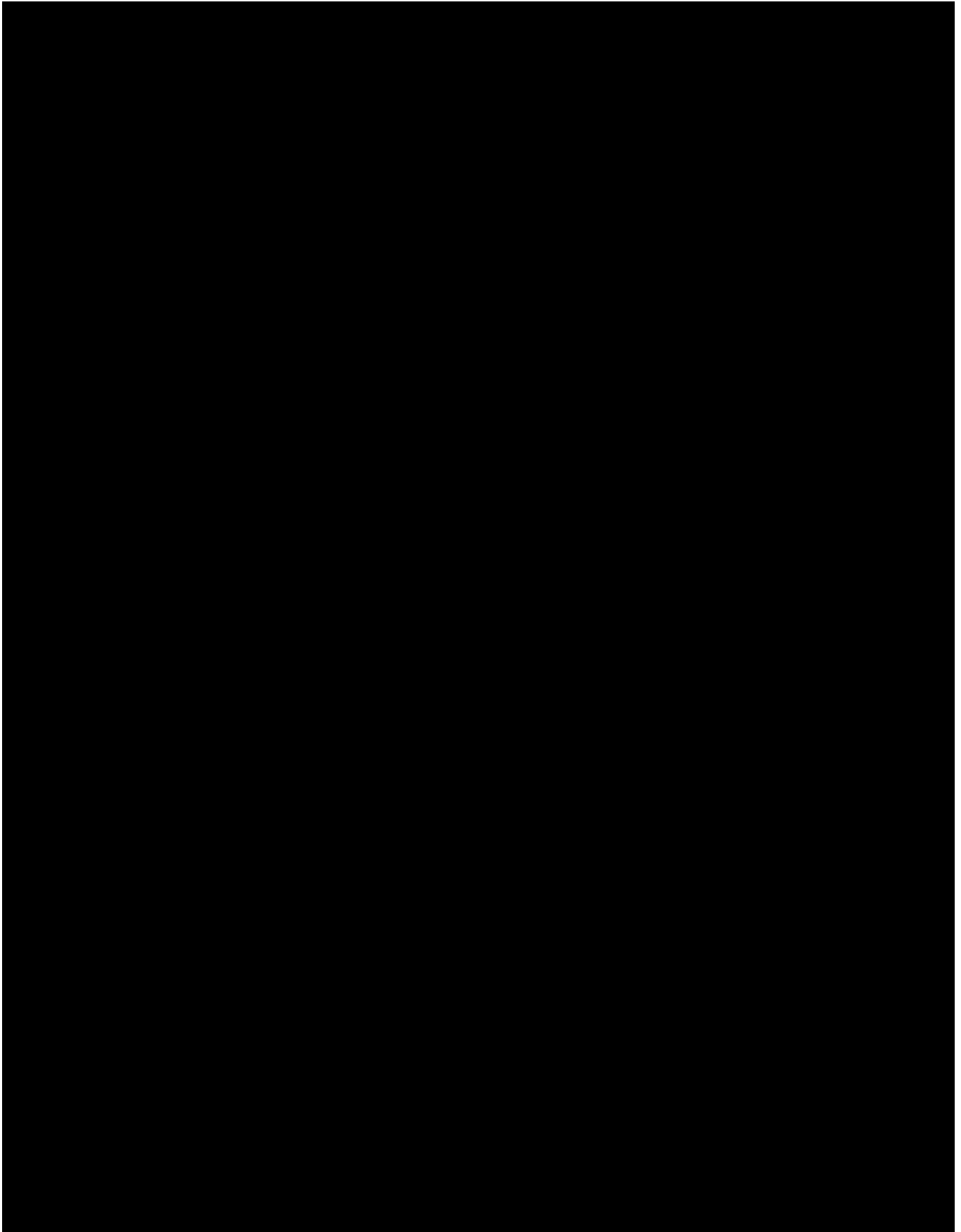
Witnesses Not Interviewed:

<u>Name</u>	<u>Job Title</u>	<u>Reason Not Interviewed</u>
Dan West	Senior Director	Sufficient information obtained to make a determination.
(b) (7)(C)		Sufficient information obtained to make a determination.
		Sufficient information obtained to make a determination.
		Sufficient information obtained to make a determination.
		Sufficient information obtained to make a determination.
		Sufficient information obtained to make a determination.
David Powers	Management	Sufficient information obtained to make a determination.
		CP provided a list of potential witnesses and government witnesses to interview, but they were not interviewed because sufficient evidence was obtained to make a determination.

Fact Chronology (Chart):

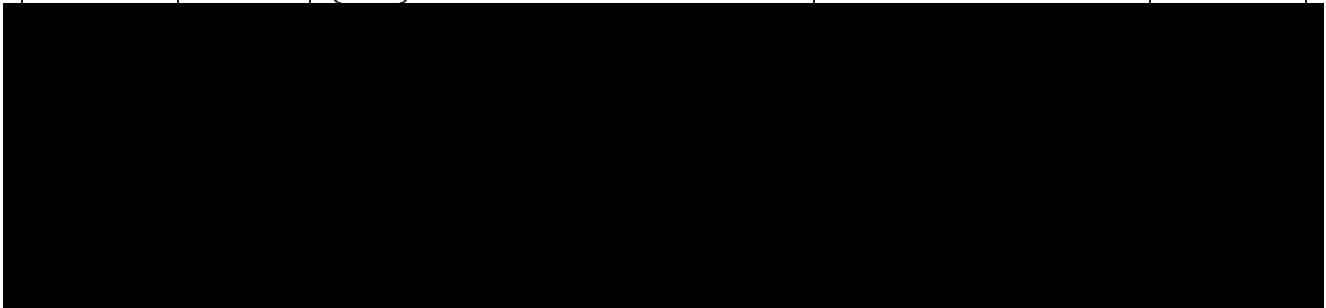
Date	Time	Event	Source	Exhibit
02/2015		RP hired CP as an iOS Build Engineer Project Manager at RP's Sunnyvale, CA location. (Fact)	Intake Interview RP Position Statement	2-A 4-A







8/20/21		CP sent a text message to another employee revealing she disclosed information about the Alpha study to a reporter from The Verge. (Fact)	Text Message	4-C, pg. 24-38
---------	--	---	--------------	----------------



8/28/21		CP tweeted details about a proprietary study RP was conducting codenamed "Omega". (Fact)	RP Position Statement Screenshot of Tweet	4-A 4-C, pg. 12-14
8/29/21		RP received a formal complaint through its Business Conduct Hotline that CP disclosed confidential information about the Omega study on Twitter. (Fact)	RP Position Statement Hotline Complaint	4-A 4-C, pg. 16-17
8/29/21		CP filed whistleblower complaint online. (Fact)	Online Complaint Form	1-B
8/29/21		CP filed online complaint with DLSE. (Fact)	DLSE Complaint	3-68
8/29/21	4:44pm EDT	CP filed online complaint with EPA to report environmental concerns. CP claimed she was concerned for the safety of employees because of RP's lack of due diligence regarding the Superfund site. (Fact)	EPA Complaint	3-62
8/30/21	8:37am	CP filed online complaint with California EPA. (Fact)	CalEPA Complaint	3-69
8/30/21		CP tweeted photographs and a video of herself created by the Alpha application. CP also linked an article by The Verge in which CP	Intake Interview RP Position Statement Article Screenshot of Tweet	2-A 4-A 4-B 4-C, pg. 19

		disclosed she participated in the Alpha study. (Fact)		
8/31/21	11:19pm	CP tweeted that she filed a complaint with SEC. She also listed other government agencies she filed complaints with. (Fact)	CP's Tweet	3-112, pg. 36-28
		(b) (7)(C)		
		(b) (7)(C)		
		(b) (7)(C)		
		(b) (7)(C)		
9/9/21		CP filed a complaint with EEOC. (Fact)	Email	3-141
9/15/21		Another employee made a report to the Business Conduct Helpline about CP disclosing information about the Alpha study. (RP assertion)	RP Position Statement	4-A
9/15/21	7:40pm	RP's attorney issued a letter to CP to remove images and video from	Letter	4-C, pg. 41-42

		her Twitter because it violates the confidentiality and intellectual property agreement she signed. (Fact)		
	8:58pm	CP replied to RP's attorney that she disagreed the posts fall under confidential and proprietary information, but she removed the two posts cited. (Fact)	Email	4-C, pg. 50-53

ANALYSIS

[REDACTED]

[REDACTED]

[REDACTED]

¹ See *In the Matter of Douglas Denny v. MBDA, Inc., et al.*, ARB Case No.: 2018-0027 (January 8, 2021).

² See *In the Matter of Ed Slavin v. City of St. Augustine, Florida, et al.*, ARB Case No.: 07-002 (March 31, 2008).

EXHIBIT H

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U.S. DEPARTMENT OF LABOR
WHISTLEBLOWER PROTECTION PROGRAM

MS. ASHLEY GJOVIK

Complainant, pro se,
v.

APPLE INC., *et al.*,

Respondent.

Case No.:

U.S. Dept of Labor: 9-3290-22-051

COMPLAINT (REDACTED VERSION)

DATE: FEBRUARY 2022

Associated Cases:

U.S. SEC: 16304-612-987-465

U.S. EPA Complaint

U.S. NLRB: 32-CA- 282142, 283161,
284428, 284441, & 288816

Federal Charges:

-CERCLA, 42 U.S.C. §9610

-SOX 18 U.S.C.A. §1514A

-OSH Act §11(c) 29 U.S.C. §660

-18 U.S.C. §1512; §1513; §1505; §1001;
§371; §876

-Dodd-Frank 15 U.S.C. §78u-6(h)(1)(A)(iii)

-National Labor Relations Act §8(a)(1) & (4)

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An employer may proffer a legitimate non-retaliatory reason for the challenged action. Commonly asserted legitimate, non-discriminatory reasons for taking an adverse employment action often include insubordination and/or unsatisfactory performance.⁷⁵³ Examples of non-retaliatory reasons include:

- poor performance;
- inadequate qualifications for position sought;
- qualifications, application, or interview performance inferior to the selectee;
- negative job references;
- misconduct (e.g., threats, insubordination, unexcused absences, employee dishonesty, abusive or threatening conduct, or theft); and
- reduction in force or other downsizing.

Apple cites none of these reasons.

Apple's Allegations

“Failure to cooperate information during the Apple investigatory process”

The way Apple terminated Gjovik was highly irregular. On Sept 9 Gjovik received an email with no subject line from an Apple employee she'd never heard of. As in *Kolchinsky*, it was clear that Apple's interrogator's email to Gjovik on September 9th requesting to talk “within the hour” was purely pretextual and simply additional furtherance of the conspiracy to remove Gjovik from the company due to her protected activities and to hide the company's unlawful activities. The interrogator's email came unexpectedly, without a subject line, and without any reasoning or explanation as to why Gjovik was even being contacted.

Apple is accusing Gjovik of something that had no factual basis. Apple accused Gjovik of failing to cooperate in an investigation when Gjovik 1) replied in only two minutes 2) said she was happy to participate 3) reiterated minutes later she was happy to participate.

In the *Thomas v. Arizona Public Service* ERA Whistleblower case, the Dept of Labor court found pretext when one of the proffered reasons for not promoting a whistleblower employee was he

⁷⁵³ Richardson v. Petasis_ 160 F. Supp. 3d 88.pdf, 60 F. Supp. 3d 88, *118; 2015 U.S. Dist. LEXIS 163484,

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“lacked initiative and willingness to work overtime.”⁷⁵⁴ However, later, the employer admitted there were actually “no occasions for the employee to work overtime, therefore willingness to work overtime was not a factor.”⁷⁵⁵

Similarly, in the *Adams v. Coastal Production Operators* ERA Whistleblower case, the Dept of Labor court found pretext where one of an employer’s proffered reason for firing a whistleblower employee was “abandonment of his crew” when in reality, **1) the employer fired the employee before the employee left the area**, 2) the employer did not ask the employee to stay with the crew until a replacement arrived, and 3) alternative transportation was available for the crew.⁷⁵⁶

LAW OF CORPORATE INVESTIGATIONS

The law governing corporate investigations includes employment laws governing employers' ability to discipline and terminate employees for failure to cooperate in investigations, including both substantive and procedural rights of employee.⁷⁵⁷ Employees do not always have a duty to answer their employer's questions even about workplace conduct.⁷⁵⁸ Employees may be required to cooperate, at least if the employer had a formal policy requiring them do to so, but only in limited circumstances.⁷⁵⁹

In many countries, employers cannot use the threat of termination to pressure employees to cooperate because employment laws either preclude such threats or impose procedural impediments to employee discipline.⁷⁶⁰ Even when employees are obligated to cooperate, labor laws often preclude employers from immediately threatening to fire employees who refuse to cooperate. Even

⁷⁵⁴ *Thomas v. Arizona Public Service Co.*, 89-ERA-19 (Sec'y Sept. 17, 1993).

⁷⁵⁵ *Thomas v. Arizona Public Service Co.*, 89-ERA-19 (Sec'y Sept. 17, 1993).

⁷⁵⁶ *Adams v. Coastal Production Operators, Inc.*, 89- ERA-3 (Sec'y Aug. 5, 1992).

⁷⁵⁷ Jennifer Arlen* and Samuel W. Buell, *The Law Of Corporate Investigations And The Global Expansion Of Corporate Criminal Enforcement*, CORPORATE CRIMINAL ENFORCEMENT, 93 S. Cal. L. Rev. 697 (May 2020)

⁷⁵⁸ Hans Van Bavel & Frank Staelens, *Belgium, in The International Comparative Legal Guide to: Corporate Investigations* 2018 25, 29 (2d ed. 2018).

⁷⁵⁹ Code du travail [C. trav.] [Labor Code] art. L.1232-1 (Fr.). In Germany, employees **may** have a right to resist if the employment agreement does not specify a right to cooperate or if the employee's personality rights preempt the employer's right to information. *See Bundesarbeitsgericht [BAG] [Federal Labor Court] Sept. 7, 1995, 8 AZR 828/93 (Ger.). See also Michael Kempter & Bjorn Steinat, Compliance - arbeitsrechtliche Gestaltungsinstrumente und Auswirkungen in der Praxis [Compliance - Employment-Related Design Instruments and Effects in Practice], Neue Zeitschrift fur Arbeitsrecht [NZA] 1505, 1511 (2017).*

⁷⁶⁰ *See Restatement (third) of Emp't Law § 2.01 (Am. Law Inst. 2014); see Samuel Estreicher & Jeffrey M. Hirsch, Comparative Wrongful Dismissal Law: Reassessing American Exceptionalism, 92 N.C. L. Rev. 343, 347 (2014).*

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when termination for non-cooperation is possible, employers often cannot threaten termination until less extreme forms of discipline, such as a formal warning letter or suspension, have failed, and, even then, only in some circumstances.⁷⁶¹

To justify termination, the employee's repeated refusal must provide the employer reasonable grounds for concluding that the employee cannot be trusted in the future. The employer may be unable to establish this if the employee is otherwise trustworthy and is not implicated in the offense, or if the employer did not terminate other non-cooperative employees.⁷⁶²

Companies conducting internal investigations overseas may not be able to both threaten to fire employees in order to induce them to talk and maintain confidentiality of investigative findings.⁷⁶³

⁷⁶¹ For example, in Australia an employer must warn an employee prior to commencing procedures to fire him. *See* Estreicher & Hirsch, *supra* note 69, at 359-60. Even then, termination will not be permitted if it is deemed harsh, unjust, or unreasonable under the circumstances. *See Mocanu v Kone Elevators Pty Ltd.*, [2018] FWC 1335 (Austl.). In England, Wales, Germany, and Italy, companies are expected to proceed through stages, beginning with a warning, and moving to more serious sanctions short of dismissal, before seeking dismissal. Employers may need to delay sanction until obtaining the employee's justification. *See* Bürgerliches Gesetzbuch [BGB] [Civil Code], §§622, 626 (Ger.) (employers should warn first, unless a compelling reason justifies termination without notice); Bundesarbeitsgericht [BAG] [Federal Labor Court], June 10, 2010, 2 AZR 541/09; Erfurter Kommentar zum Arbeitsrecht [Comment on Labor Law] P 198 (19th ed. 2019) (Ger.); Carlton et al., *supra* note 137, at 179; Gianfranco Di Garbo et al., *Italy*, in *Corporate Internal Investigations: Overview of 13 Jurisdictions*, *supra* note 110, at 245, 270-71; Sebastian Lach et al., *Germany*, in *The Practitioner's Guide to Global Investigations*, *supra* note 110, at 569; Joanna Ludlam & Henry Garfield, *England and Wales*, in *Corporate Internal Investigations: Overview of 13 Jurisdictions*, *supra* note 110, at 105, 126-27; Carlton et al., *supra* note 137, at 179; Burkard Gopfert et al., "Mitarbeiter als Wissensträger" - Ein Beitrag zur aktuellen Compliance-Diskussion [*Employees as Knowledge Carriers - A Contribution to the Current Compliance Discussion*], *Neue Juristische Wochenschrift* [NJW] 1703, 1707 (2008) (Ger.); Volker Rieble, *Schuldrechtliche Zeugenpflicht von Mitarbeitern* [*Obligatory Witnessing of Employees*], *Zeitschrift für Wirtschaftsrecht* [ZIP] 1273 (2003) (Ger.).

⁷⁶² In Germany and Austria, employers cannot reliably fire an employee for refusing to cooperate even when the employee had a duty to do so. Employers must establish that termination is needed to protect the employer, and not as a punishment. Failure to cooperate may not constitute adequate cause for dismissal if the employee is not implicated and has otherwise proved trustworthy. *See* Bundesarbeitsgericht [BAG] [Federal Labor Court] Oct. 23, 2008, 2 AZR 483/07, para. 32 (Ger.); *see also* Philipp Becker et al., *Investigations in Germany*, in *Corporate Internal Investigations: An International Guide*, *supra* note 107, at 225, 263 (discussing Germany). Repeated failure to cooperate may provide cause for termination in Germany if the employer sends the employee a formal warning letter and the employee commits a subsequent violation. Lach et al., *supra* note 143, at 717. These substantive and procedural limitations on dismissal apply even if the employer has concluded that the employee committed misconduct. Bundesarbeitsgericht [BAG] [Federal Labor Court] Oct. 23, 2008, 2 AZR 483/07, para. 32 (Ger.). Repeated failure can justify termination in Austria if it provides evidence of untrustworthiness, yet threat of termination is a last resort, and the employer's right to take such action must be found in a law, a collective agreement, or a works agreement. Georg Krakow & Alexander Petsche, *Austria*, in *Corporate Internal Investigations: Overview of 13 Jurisdictions*, *supra* note 110, at 1, 24-25, 33-34.

⁷⁶³ Indeed, some countries apply the principle of *ne bis in idem* (double jeopardy) to disciplinary procedures. In such countries, a company's decision to sanction the employee for failing to cooperate may prevent the company from later terminating the employee for the misconduct should the evidence reveal the employee was involved. In France, it appears that an employer discovering misconduct or gross misconduct cannot sanction an employee unless the employer begins the dismissal process within two months of becoming aware of the misconduct. Matthew Cowie & Karen Coppens, *Multi-Jurisdictional Criminal Investigations - Emerging Good Practice in Anglo-French Investigations*, in *The International Comparative Legal Guide to: Corporate Investigations 2018*, [supra note 139, at 4, 6](#). In Belgium, an employer who has

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Labor laws can also impose procedural burdens likely to dissuade companies from disciplining non-cooperative employees, particularly when investigating misconduct of which the government is unaware.

In *Kolchinsky*, a whistleblower began suffering retaliation shortly after protected activity, and alleges that he was excluded from meetings, demoted and had his salary and bonuses reduced. Soon after, he was transferred to a "support" role, a move that the plaintiff perceived as retaliatory and detrimental to his future promotion prospects. Although the **plaintiff asserted that he otherwise cooperated with the investigators**, he declined to meet with the investigative team without his own attorney present, and as a consequence, the defendant *suspended him for failure to cooperate*. The plaintiff alleged in his SOX whistleblower complaint that this suspension amounted to constructive termination, noting that his name was removed from the company's directory, he was forced to return all company property, and was told that he would not be doing any work for the company again.⁷⁶⁴

The employer's argument that the Complainant was suspended and later discharged solely because he refused to meet with outside auditors to discuss issues the Complainant had raised without a personal attorney present was not convincing. Rather, the ALJ found that the evidence established that the "investigation" of the Complainant's complaints was *orchestrated* by the President/CEO and Chairman, acting in concert with the outside auditors, in such a manner as to *justify* the Complainant's termination. Thus, the purported "insubordination" of refusing to appear without a personal attorney present was mere pretext.⁷⁶⁵

“APPLE'S SLEAZY SECRET POLICE”

In stark contrast to international labor standards, Gizmodo profiled Apple's Global Security team in 2009, illustrating how this “Worldwide Loyalty Team,” as they were called, “*does KGB-style*

received a credible allegation of misconduct against an employee whom he would like to discipline has only three working days to inform the employee of the factual basis for dismissal and then to discuss it with the employee. The clock begins running before the firm completes its investigation. Carl Bevernage, *Belgium*, in *International Labor and Employment Laws 3-1, 3-28* (William L. Keller et al. eds., 2009). In Italy, an employer seeking to terminate an employee is required to provide written notice to the employee of his misconduct as soon as the employer detects a violation. The employee has five days to reply. Only then may the employer decide whether to terminate, if warranted. Bruno Cova & Francesca Petronio, *Italy*, in *The European, Middle Eastern and African Investigations Review* 2017 34, 37 (2017).

⁷⁶⁴ *Kolchinsky v. Moody's Corp.*, No. 10 Civ. 6840(PAC), 2012 WL 639162 (S.D.N.Y. Feb. 28, 2012)

⁷⁶⁵ *Welch v. Cardinal Bankshares Corp.*, 2003-SOX-15 (ALJ Jan. 28, 2004),

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lockdowns [of employees] and Gestapo interrogations that end in suicides.”⁷⁶⁶ The team is an “*internal secret police team known for its network of informers, and ruthless, systematic pursuit of leakers.*”⁷⁶⁷ “Among some employees, they are known as the Apple Gestapo, a group of moles always spying in headquarters and stores, reporting directly to the CEO.”⁷⁶⁸

The article explained that Apple held its security policies out as “*voluntary*” meanwhile: “management recommends that you relinquish your phones. If you don't do it they will fire you, or they will investigate why you didn't want to give them your cellphone. Simultaneously, everyone is asked to sign NDA's during the investigations, even though they already signed Apple NDAs to work there.”⁷⁶⁹

Apple's Global Security team is currently led by Thomas Moyer (who was indicted by Santa Clara County in 2020 for “bribery” of local law enforcement).⁷⁷⁰ Apple's Global Security team has a sketchy history, including Apple employees accused in 2011 of impersonating policemen and searching a man's San Francisco home for a lost prototype, threatening to have the man deported if he did not cooperate.⁷⁷¹ Apple was also accused in 2010 of a violation of California's shield law with an illegal search warrant, when they searched the home of a journalist, again looking for a prototype.⁷⁷² Gawker described Apple's secret police as “*sleazy.*”

The Gizmodo article described Apple employee's experience with this *Gestapo* as “knowing how it feels to be watched, to always be considered guilty of crimes against another kind of state. Knowing how it felt to have no privacy whatsoever when he was working right here, in a little Californian town called Cupertino, in a legendary place located in One Infinite Loop.”⁷⁷³

⁷⁶⁶ Gawker, *Apple's Sleazy Secret Police Lose Their Leader*, Nov 4 2011, <https://www.gawker.com/5856260/apples-sleazy-secret-police-lose-their-leader>

⁷⁶⁷ Gawker, *Apple's Sleazy Secret Police Lose Their Leader*, Nov 4 2011, <https://www.gawker.com/5856260/apples-sleazy-secret-police-lose-their-leader>

⁷⁶⁸ Gizmodo, *Apple Gestapo: How Apple Hunts Down Leaks*, Dec 15 2009, <https://gizmodo.com/apple-gestapo-how-apple-hunts-down-leaks-5427058>

⁷⁶⁹ Gawker, *Apple's Sleazy Secret Police Lose Their Leader*, Nov 4 2011, <https://www.gawker.com/5856260/apples-sleazy-secret-police-lose-their-leader>

⁷⁷⁰ The Washington Post, *Apple's head of global security indicted on bribery charges*, Nov 24 2020, <https://www.washingtonpost.com/technology/2020/11/23/apple-sheriff-bribery/>

⁷⁷¹ Gawker, *Apple's Sleazy Secret Police Lose Their Leader*, Nov 4 2011, <https://www.gawker.com/5856260/apples-sleazy-secret-police-lose-their-leader>

⁷⁷² CNET, *Apple pushed security executive out*, <https://www.cnet.com/news/source-apple-pushed-security-executive-out/>; MarketWatch, *Police task force oversight committee has included Apple*, <https://www.marketwatch.com/story/apple-has-sat-on-steering-committee-for-task-force-2010-04-27>

⁷⁷³ Gawker, *Apple's Sleazy Secret Police Lose Their Leader*, Nov 4 2011, <https://www.gawker.com/5856260/apples-sleazy-secret-police-lose-their-leader>

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Gjovik was not aware of any Workplace Violence team until this encounter. Upon reviewing Apple policies, the only mention of “Workplace Violence” includes: “*Workplace violence includes, but is not limited to, physical aggression, verbal or written threats, stalking, or destruction of property*” and “*As a manager, it’s your responsibility to help Apple provide a safe workplace. Promptly report any potential threat or incident of workplace violence to your People Business Partner who will contact a member of Apple’s Threat Assessment Team to assess the situation and determine appropriate action.*” It’s entirely unclear why this team was contacting Gjovik if not to intimidate and threaten her. Gjovik suspects, and has been quoted as such, that this “Workplace Violence team” is the latest version of the “Worldwide Loyalty Team.” When Gjovik searched LinkedIn for the team name within Apple, the only other employees who showed up was “executive security” and the employee who broke into the SF man’s apartment in 2011.

Silicon Valley companies have stacked what they often call their “trust and safety” teams with former police officers and national intelligence analysts. The industry’s intense focus on reputation can lead their security units astray.⁷⁷⁴ When working for tech companies, private investigators have access to more data, deal with far less red tape, and they have the ability to quickly cross jurisdictions and borders.⁷⁷⁵ The “*Pinkerton promise*” is attractive to some Silicon Valley firms. *The Guardian* reported on March 16 that Google and Facebook have both retained Pinkerton to monitor staff for leaks. “*Among other services, Pinkerton offers to send investigators to coffee shops or restaurants near a company’s campus to eavesdrop on employees’ conversations,*” Olivia Solon reported. A Pinkerton representative told Solon that the firm’s reach may not end with simply IP concerns. “*Through LinkedIn searches, The Guardian found several former Pinkerton investigators to have subsequently been hired by Facebook, Google, and Apple,*” Solon wrote.⁷⁷⁶

⁷⁷⁴ The New York Times, *EBay’s Critics Faced an Extreme Case of an Old Silicon Valley Habit*, July 27 2020, <https://www.nytimes.com/2020/06/27/technology/ebay-silicon-valley-security-reputation.html>

⁷⁷⁵ The New York Times, *EBay’s Critics Faced an Extreme Case of an Old Silicon Valley Habit*, July 27 2020, <https://www.nytimes.com/2020/06/27/technology/ebay-silicon-valley-security-reputation.html>

⁷⁷⁶ The Guardian, *They’ll squash you like a bug’: how Silicon Valley keeps a lid on leakers*, March 2018, <https://www.theguardian.com/technology/2018/mar/16/silicon-valley-internal-work-spying-surveillance-leakers> ; The New Republic, *The Pinkertons Still Never Sleep*, March 23 2018, <https://newrepublic.com/article/147619/pinkertons-still-never-sleep>

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Further, as in *Kolchinsky*, Gjovik agreed to participate in the investigation, however noted the prior retaliation and current government investigations and simply requested to keep discussion in writing (similar to Kolchinsky requesting his lawyer be present), a far cry from “*failure to cooperate*.” Gjovik was not aware of any Workplace Violence team until this encounter. Upon reviewing Apple policies, the only mention of “Workplace Violence” includes: “*Workplace violence includes, but is not limited to, physical aggression, verbal or written threats, stalking, or destruction of property*” and “*As a manager, it’s your responsibility to help Apple provide a safe workplace. Promptly report any potential threat or incident of workplace violence to your People Business Partner who will contact a member of Apple’s Threat Assessment Team to assess the situation and determine appropriate action.*” It’s entirely unclear why this team was contacting Gjovik if not to intimidate and threaten her.

Apple’s Business Conduct policy simply stated “*You are also required to fully cooperate in any Apple investigation.*”⁷⁷⁷ It said nothing about cooperation requiring no paper trail of what occurred. Gjovik **agreed to cooperate within two minutes** of the request. Gjovik did not breach her requirement to cooperate, regardless of whatever the requirement was even lawful under the circumstances. In fact, only a month before, Gjovik was participating in a Business Conduct investigation into the possible sanctions violation where she also 1) responded in two minutes 2) said she was happy to help. No concerns were raised by Apple about that exchange. It’s unclear how this was different.

On Sep 9, 2021, at 2:08 PM, Aleks Kagramanov wrote:

Subject: [No Subject]

Hi Ashley,

This is Aleks Kagramanov from Employee Relations. We’re looking into a sensitive Intellectual Property matter that we would like to speak with you about. We would like to connect with you at as soon as possible today; within this hour, and you should see an iCal come through shortly. We sincerely appreciate you prioritizing this call and being flexible. If you absolutely cannot make this time, please propose a few other times for us to connect today. I wanted to send this introductory email so you know who I am when I set it up. I can share more details when we meet.

As part of Apple’s policy, your cooperation and participation is imperative. Thank you in advance, and talk soon.

Best, Aleks Kagramanov, Employee Relations, AMR Threat Assessment & Workplace Violence (TAT) Apple

⁷⁷⁷ Apple Inc, *Business Conduct Policy*, Rev Oct 2020 (Current)

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On Sep 9, 2021, at 2:10 PM, Ashley Gjovik wrote:

Hi Aleks! Happy to help! Please send any questions / updates via email so we keep everything written please. I will respond via email as quickly as I can. Thanks!

On Sep 9, 2021, at 2:27 PM, Ashley Gjovik wrote:

FYI, I forwarded your email & my reply to the investigator on my NLRB case so he's aware you just reached out to me the day before my Affidavit is supposed to be taken. This feels a little like witness intimidation, etc...

On Sep 9, 2021, at 2:50 PM, Aleks Kagramanov wrote:

We are investigating allegations that you improperly disclosed Apple confidential information. **Since you have chosen not to participate in the discussion**, we will move forward with the information that we have, and given the seriousness of these allegations, we are suspending your access to Apple systems.

Best, Aleks Kagramanov, Employee Relations, AMR Threat Assessment & Workplace Violence (TAT) Apple

On Sep 9, 2021, at 3:07 PM, Ashley Gjovik wrote:

Hi Aleks,

As mentioned, I'm definitely willing to participate in your investigation. I only asked that the discussion be kept to email — I said nothing about not participating in the discussion at all. I offered to help via email to ensure we have a documented record of our conversations considering everything that's currently going on with my investigation and my complaints to the government.

I have been speaking out about work conditions, about workplace safety, concerns about discrimination & retaliation, and about concerns about intimidation and corruption (as reported to the government in public record).

I'm very concerned about what you are calling "serious allegations." Can you please provide me additional detail on what these allegations are? And when you say move forward, are you simply suspecting my access to Apple system? Or are you doing something more — and if so what?

Your email is very unexpected and I'm caught quite off guard if this is a real issue. I'd like the opportunity to remedy any actual issues. Please let me know what the issues are so I can make a good faith attempt at that.

In the meantime, without any additional context or effort to communicate with me in email, this really does feel like intimidation and additional retaliation and I will consider it as such.

Best,-Ashley

Date: September 9, 2021 at 6:54 PM

Subject: Employment Status

To: Ashley Gjovik

From: Yannick Bertolus (VP)

Hi Ashley, Please see attached.

ATTACHMENT: Re: Termination of employment

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Apple has determined that you have engaged in conduct that warrants termination of employment, including, but not limited to, violations of Apple policies. You disclosed confidential product-related information in violation of Apple policies and your obligations under the Intellectual Property Agreement (IPA). We also found that you failed to cooperate and to provide accurate and complete information during the Apple investigatory process. Your access to Apple systems has been suspended as of today and your employment will terminate on September 10, 2021. You will receive your final pay which will include regular pay through your termination date, all accrued unused vacation pay and any ESPP contributions made in the current period.



“Disclosure of confidential product-related information”

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An employee has a duty to obey the employer's lawful and reasonable orders within the scope of the contract of employment.⁷⁷⁸ If the employer's order is reasonable and lawful, the claimant's willful disobedience, without justification, would constitute misconduct.⁷⁷⁹ However, Congress, the state legislature, and the courts have recognized that not every demand of an employer is a lawful one,⁷⁸⁰ even if the employee originally agreed to comply with such a demand.⁷⁸¹ Noncompliance with an employer's order (or rule) is justified if the order (or rule) is unreasonable or unlawful.⁷⁸² Disobedience to unlawful demands does not constitute insubordination.⁷⁸³ This exception may apply even if the illegality of the rule has not been established by any court before the refusal to obey.⁷⁸⁴

The Restatement makes clear: information regarding an employer's illegal activities is not a trade secret.⁷⁸⁵ Further, information regarding an employer's illegal activities is not protectable by means of restrictive covenant.⁷⁸⁶ Facts relating to actual, alleged, or potential violations of the law are generally not protectable trade secrets. An employee's agreement not to disclose such information may, in some situations, be unenforceable as against public policy.⁷⁸⁷ The Restatement also says, "*if information is known generally to the public or widely in the employer's industry, or is readily obtainable by others through proper means, it is not a trade secret.*"⁷⁸⁸

Compliance is not required if the order is unreasonable, including if: the employee has a reasonable and good-faith doubt of the authority of the individual issuing the order; compliance would impose a new and unreasonable burden on the claimant; the rule does not relate to or affect the

⁷⁷⁸ Labor Code section 2856; *May v. New York Motion Picture Corporation* (1920), 45 Cal. App. 296, 187 P. 785, 788).

⁷⁷⁹ California EDD, *Misconduct MC 225: Insubordination*

⁷⁸⁰ Labor Code sections 222.5, 552, 922, 923, 1101, 1102, 1196, 1198, 1199, 1250, 1252, 1292 to 1294, 1350 to 1351, 1391 to 1393, 1420, and 2855; Labor-Management Relations Act of 1947, 29 U.S.C.A. section 141; *Lockheed Aircraft Corporation v. Superior Court* (1946), 28 Cal. 2d 481, 171 P. 2d 21, 166 A.L.R. 701; *Fort v. Civil Service Commission* (1964), 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P. 385; *Bowling v. Unemployment Insurance Commission* (1966), Circuit Court of Lester Co., Civil Case No. 1725, reported in 4 Commerce Clearing House Unemployment Insurance Reporter, "Kentucky," paragraph 8285),

⁷⁸¹ Civil Code section 1676; Labor Code section 2855; *DeHaviland v. Warner Brothers Pictures* (1945), 67 Cal. App. 2d 255, 153 P. 2d 983; *Liberio v. Vidal* (1966), 240 Cal. App. 2d 273, 49 Cal. Rptr. 520; *Heaps v. Toy* (1942), 54 Cal. App. 2d 178, 128 P. 2d 813).

⁷⁸² California EDD, *Misconduct MC 225: Insubordination*

⁷⁸³ *Douglas Santos v Standard Stations Inc.*, California Unemployment Insurance Appeals Board, Benefit Dec No 75- 69-1743, Precedent Benefit Decision No P-B-66 (1975)

⁷⁸⁴ *Parrish v. Civil Service Commission* (1967), 66 A.C. 253, 66 Cal. 2d ___, 57 Cal. Rptr. 623.

⁷⁸⁵ Restatement of the Law, Employment Law, § 8.02, Definition of Employer's Trade Secret, *Comment*

⁷⁸⁶ Restatement of the Law, Employment Law, § 8.02, Definition of Employer's Trade Secret, *Comment*

⁷⁸⁷ *EEOC v. U.S. Steel Corp.*, 671 F. Supp. 351, 358 (W.D. Pa. 1987); *Chambers v. Capital*, 159 F.R.D. 441, 444 (1995); *EEOC v. Astra, Inc.*, 94 F.3d 738, 745 (1st Cir. 1996)

⁷⁸⁸ Restatement of the Law, Employment Law, § 8.02, Definition of Employer's Trade Secret, *Comment*

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employer's business interests; or if the employee reasonably and in good faith believes compliance would result in a violation of the law, objects or makes a reasonable effort to object to the employer, and the employer makes no reasonable effort to explain the basis for the order to the employee.⁷⁸⁹ On the contrary, examples of “reasonable rules” including showing up for work, performing work to the best of one's ability, obeying a reasonable employer order and refraining from fighting or sleeping on the job.⁷⁹⁰

As previously discussed, Apple is notorious for oppressing & silencing their workforce. An opinion piece was written by Anil Dash about the issue. Dash is “recognized as one of the most prominent voices advocating for a more humane, inclusive & ethical technology industry,” was an advisor to the Obama White House, and is a Board Member of the EFF (Electronic Frontier Foundation) an international, non-profit digital rights group.⁷⁹¹ Dash wrote about Apple:

The sad truth is that Apple is still stuck in an **anachronistic, 1984 mode** of communicating with the world. If Apple doesn't evolve, it'll become a pathetic-looking giant, constantly playing whack-a-mole with information leaks, diminishing its relevance by antagonizing the very creators it has so long sought to identify with. ... The reckoning Apple has reached, whether it's admitted or not, is that its **secrecy is compromising its humanity...** It's incumbent upon Apple to do the moral thing here. Treat your employees, customers, suppliers and partner companies better, by letting them participate in the thing most of your products are designed for: Human self-expression. If the ethical argument is unpersuasive, then focus on the long-term viability of your marketing and branding efforts, and realize that a technology company that is determined to prevent information from being spread is an organization at war with itself. **Civil wars are expensive, have no winners, and incur lots of casualties.**⁷⁹²

Apple clearly did not listen.

GJOVIK DID NOT VIOLATE HER IPA WITH APPLE

Less than four hours later after her accounts were suspended on Sept 9, Gjovik received an email notice that she was being terminated. According to the termination letter, Gjovik “*disclosed confidential product-related information in violation of Apple policies and [her] obligations under the Intellectual Property Agreement (IPA). [The Company] also found that [she] failed to cooperate and to provide accurate and complete information during the Apple investigatory process.*” The letter took Gjovik by surprise, considering that she had not disclosed any information in violation of the IPA, and

⁷⁸⁹ 22 CCR § 1256-36. *Discharge for Misconduct -Insubordination*; California EDD, *Misconduct MC 225: Insubordination*

⁷⁹⁰ California EDD, *Misconduct*, https://www.edd.ca.gov/UIBDG/Misconduct_MC_5.htm

⁷⁹¹ EFF, Anil Dash, <https://www.eff.org/about/staff/anil-dash>

⁷⁹² Anil Dash, Apple: Secrecy Does Not Scale, Anil Dash, https://anildash.com/2009/07/31/apple_secrecy_does_not_scale/

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considering that she offered her assistance in the investigatory process. The rationale for Gjovik's termination was pretextual. Not only did Gjovik did not disclose any information in violation of the IPA, but Apple knew that her disclosures were not violations of the IPA.

Apple's reasons for terminating Gjovik are pretextual and in no way could be proven with clear & convincing evidence that Apple would have taken the actions it did to Gjovik in the absence of Gjovik's protected activities. First, Apple's reasons for the termination do not explain the reasoning for the hostile work environment, change in work responsibilities, sham investigations, construction termination, suspension, or other adverse action that occurred before the events Apple points to. Next, Apple has not taken negative actions against others who did similar actions as Gjovik, with the only difference being Gjovik's protected conduct. Further, substantial, compelling evidence points to forbidden animus and retaliatory motive in Apple's actions against Gjovik starting in the spring of 2021. **As noted in *Kinzel*, if animus is found for one adverse employment action, that animus may be imputed upon other adverse action happening in close temporal proximity.**⁷⁹³

In August and September 2021, Gjovik expressed public concerns about Apple Inc's surveillance of employees, including an internal iPhone application which took photos and videos whenever it thought it saw a face and shared the data with Apple engineering teams. Gjovik saw the images her phone was capturing of her, including: her naked, her in bed, her in the bathroom, her friends if near her, at the doctor's office, personal documents in the background, etc.

Numerous federal and state labor laws protect employee's ability to speak out about work conditions and labor issues. All of the information shared by Gjovik was about work conditions, safety concerns, labor concerns, and other protected activities. Even the implied, supposedly "legitimate" reasons for Gjovik's termination are themselves protected statements with Gjovik expressing concerns about Apple's surveillance, intimidation, and intrusive personal data collection of its employees.

The public policy protecting whistleblowers would be completely thwarted if the employer could retaliate with impunity against any employee who decided to reveal improper conduct by the employer.⁷⁹⁴ A California court wrote that an employer claiming a whistleblower had "unclean hands"

⁷⁹³ *Kinzel v. Discovery Drilling, Inc.* Supreme Court of Alaska June 25, 2004, Decided Supreme Court No. S-10190, No. 5820

⁷⁹⁴ . (See **334 *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 229-230, 152 Cal.Rptr.3d 392, 294 P.3d 49; *Green v. Ralee Engineering Co.* (1998) 19 Cal.4th 66, 90, 78 Cal.Rptr.2d 16, 960 P.2d 1046 *Whitehall v. County of San Bernardino*, 17 Cal.App.5th 352 (2017)

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in the case before them, “*brings to mind the image of Prefect Louis exclaiming his shock at hearing gambling was occurring at Rick's American Café while counting his winnings in the movie Casablanca.*”⁷⁹⁵

Analysis: Privacy

Privacy in California

Article I, section 1 of the California Constitution provides that the right of "privacy" is among the people's inalienable rights. California appellate courts and at least one federal court have consistently held, in varying contexts, that Article I, section 1 provides some protection against non-governmental intrusion, as well as state conduct.⁷⁹⁶ The legislative history (ballot argument) stated,

"The right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose. It prevents government and business interests from collecting and stockpiling unnecessary information about us and from misusing information gathered for one purpose in order to serve other purposes or to embarrass us."⁷⁹⁷

California courts have found, "*The constitutional [privacy] provision is self-executing; hence, it confers a judicial right of action on all Californians. Privacy is protected not merely against state action; it is considered an inalienable right which may not be violated by anyone.*"⁷⁹⁸

While a California employee sacrifices some privacy rights when he enters the workplace, the employee's privacy expectations must be balanced against the employer's interests.⁷⁹⁹ Privacy, like the other inalienable rights listed first in our Constitution, is at least as fundamental as the antitrust statutes in *Tameny* or the perjury statutes in *Petermann*. The right of privacy is unquestionably a fundamental

⁷⁹⁵ Whitehall v. County of San Bernardino, 17 Cal.App.5th 352 (2017)

⁷⁹⁶ *Porten v. University of San Francisco* (1976) 64 Cal.App.3d 825; *Cutter v. Brownbridge* (1986) 183 Cal.App.3d 836; *Miller v. National Broadcasting Company* (1986) 187 Cal.App.3d 1463; *Chico Feminist Women's Health Center v. Scully* (1989) 208 Cal.App.3d 230; *Chico Feminist Women's Health Center v. Butte Glenn Medical S.* (1983) 557 F.Supp. 1190; *Wilkinson v. Times Mirror Corporation* (1989) 215 Cal.App.3d 1034; *Semore v. Pool* (1990) 217 Cal.App.3d 1034; *Luck v. Southern Pacific Trans. Co.* (1990) 218 Cal.App.3d 1.

⁷⁹⁷ *Wilkinson v. Times Mirror Corporation* (1989) 215 Cal.App.3d 1034.

⁷⁹⁸ *Wilkinson v. Times Mirror Corporation* (1989) 215 Cal.App.3d 1034.

⁷⁹⁹ *Semore v. Pool* (1990) 217 Cal. App. 3d 1088

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interest of our society.⁸⁰⁰ California accords privacy the constitutional status of an inalienable right, on a par with defending life and possessing property.⁸⁰¹

While plaintiff could contractually agree not to assert his right to privacy, the employer cannot be allowed to use such an agreement to circumvent the public policy favoring privacy, and the employer could not successfully enforce such a contractual agreement if it intruded on plaintiff's right to privacy.⁸⁰² If the intrusion violates the right to privacy, it is illegal whether or not it is pursuant to an agreement. If pursuant to such an agreement, the agreement would be unenforceable because it would be against public policy. The public policy here "*affects the duty not to intrude on the right of privacy, which inures to the benefit of the public at large rather than to a particular employer or employee.*"⁸⁰³

In California, it is a misdemeanor to invade someone else's privacy by using a device to view someone inside a private room (PC 647j1) or secretly photographing someone in a private room (PC 647j3). Under federal law, it is a crime to "capture an image of a private area of an individual without their consent and when the individual has a reasonable expectation of privacy."⁸⁰⁴ Further, California Labor Code 435(a) states that "no employer may cause an audio or video recording to be made of an employee in a restroom, locker room, or room designated by an employer for changing clothes, unless authorized by court order."

Apple's Position on Privacy

Apple says, "**Apple believes that privacy is a human right.**"⁸⁰⁵ Apple's website says, "*Privacy is a fundamental human right. At Apple, it's also one of our core values. Your devices are important to so many parts of your life. What you share from those experiences, and who you share it with, should be up to you.*"⁸⁰⁶

⁸⁰⁰ *Rulon-Miller v. International Business Machines Corp.* (1984) 162 Cal. App. 3d 241, 255 [208 Cal. Rptr. 524], quoting *City and County of San Francisco v. Superior Court* (1981) 125 Cal. App. 3d 879, 882 [178 Cal. Rptr. 435].

⁸⁰¹ *Vinson v. Superior Court* (1987) 43 Cal. 3d 833, 841 [239 Cal. Rptr. 292, 740 P.2d 404] [limiting right to discover one's sexual history, habits and practices in action for sexual harassment and emotional distress].

⁸⁰² *Foley v. Interactive Data Corp.*, 47 Cal.3d at p. 670 (1988)

⁸⁰³ *Semore v. Pool* (1990) 217 Cal. App. 3d 1088

⁸⁰⁴ 18 U.S.C. § 1801 (2018)

⁸⁰⁵ Apple Inc, *iCloud security overview*, <https://support.apple.com/en-us/HT202303> (Last Checked Mar 23 2022)

⁸⁰⁶ Apple Inc, *Privacy*, <https://www.apple.com/privacy/> (Last Checked Mar 23 2022)

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Robert McKeon, Apple’s “data hungry” “Gobbler” user study manager, write in a public article about Apple Face ID development, *“As a democratic republic, we expect to have privacy as a lack of privacy is tied to tyranny. The founding of our nation was opposed to tyranny, at least ideologically, even though we have had some major issues with the subject.”*⁸⁰⁷

On April 24 2019, McKeon posted on LinkedIn an article about privacy, Personally identifiable information (PII) & his work developing Face ID at Apple.⁸⁰⁸ McKeon wrote that despite running user studies that gathered personal data for years, that he “*did not participate in having [his] data collected.*” He said he “*was an anomaly for other researchers. [He] didn’t feel comfortable with it, and data collection was voluntary. Not everyone was happy with the concept that [he] would ask for people’s help but wouldn’t help [himself]. I was stubborn in my belief that I didn’t feel the system was private enough. I didn’t want my picture in research papers either.... [he] then went on to collect 4,600 3D face scans of ~500 subjects.*” McKeon concluded, “*Privacy is an essential component in the company’s DNA.*”⁸⁰⁹

CRITICISM

Thomas le Bonniec, an ex-Apple contractor and whistleblower, wrote to regulators in 2019: “*It is worrying that Apple keeps ignoring and violating fundamental rights and continues their massive collection of data. “I am extremely concerned that big tech companies are basically wiretapping entire populations despite European citizens being told the EU has one of the strongest data protection laws in the world. Passing a law is not good enough: it needs to be enforced upon privacy offenders.”*⁸¹⁰ Le Bonniec, said Apple has been, “*operating on a moral and legal grey area and they have been doing this for years on a massive scale. They should be called out in every possible way.*”⁸¹¹

Le Bonniec exposed that Siri is recording when it is not triggered by the users. Thousands of recordings were sent to Apple in order for hundreds of Apple employees to listen, analyse and transcribe

⁸⁰⁷ <https://towardsdatascience.com/face-recognition-3d-face-recognition-from-infancy-to-product-209126575b56>

⁸⁰⁸ <https://www.linkedin.com/pulse/privacy-machine-learning-pii-robert-mckeon-aloe/>

⁸⁰⁹ <https://towardsdatascience.com/face-recognition-3d-face-recognition-from-infancy-to-product-209126575b56>

⁸¹⁰ The Guardian, *Apple whistleblower goes public over lack of action*, May 2020,, <https://www.theguardian.com/technology/2020/may/20/apple-whistleblower-goes-public-over-lack-of-action>

⁸¹¹ he Guardian, *Apple whistleblower goes public over lack of action*, May 2020,, <https://www.theguardian.com/technology/2020/may/20/apple-whistleblower-goes-public-over-lack-of-action>

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their content. The public statement reveals that Apple collected millions of confidential messages, full of intimate details, political opinions, sexual preferences, and discussions between persons in a room, without the users even being aware of it. In 2019, Apple admitted that these practices were not up to the privacy standards. According to today's disclosures it seems that contrary to Apple's statement, no end was put to the recording of Apple's users.⁸¹²

Privacy in Employment

The Restatement explains that Employees have protected interests, including “the privacy of the employee's person (including aspects of his physical person, bodily functions, and personal possessions) as well as the privacy of the physical and electronic locations, and the privacy of the employee's information of a personal nature.”⁸¹³ An employer may have liability for a wrongful intrusion tort if the intrusion is highly offensive to a reasonable person in the circumstances.⁸¹⁴ The test looks to (1) the intrusion upon seclusion or solitude (2) committed in a highly offensive manner.⁸¹⁵

An employee has a protected privacy interest against employer intrusion into: (1) the employee's physical person, bodily functions, and personal possessions; and (2) physical and electronic locations, including employer-provided locations, as to which the employee has a reasonable expectation of privacy. An employer intrudes upon an employee's protected privacy interest under this Section by such means as an examination, search, or surveillance.⁸¹⁶

An employee has a protected privacy interest in the employee's physical person, private physical functions, and personal possessions. This includes the employee's body, bodily fluids, and other bodily by-products. An employer's job requirement that an employee provide a urine sample as part of a test for unlawful drug use is an intrusion into a protected privacy interest. An employer observing an employee

⁸¹² Noyb, “*Siri: Are you recording me?*” “*No but I am listening to you,*” May 2020, <https://noyb.eu/en/former-apple-employee-blows-whistle-apple-again>

⁸¹³ *Restatement of the Law, Employment Law* § 7.02, Protected Employee Privacy Interests

⁸¹⁴ *Restatement of the Law, Employment Law* § 7.02, Protected Employee Privacy Interests, *Comments*

⁸¹⁵ § 652B Intrusion Upon Seclusion

⁸¹⁶ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations

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engaged in private physical functions in a bathroom stall is an intrusion into a protected privacy interest.⁸¹⁷

When it comes to personal property or locations that the employee owns or has access to outside of the workplace, employees will generally enjoy the same expectations of privacy against employer intrusions as they do with respect to other third-party intrusions. The reasonableness of those privacy expectations will be a function of the nature of the location, the ease of observation or interference by others, and the likelihood of the intrusion. Even though the employee might not expect an employer to intrude into nonworkplace locations, the employee cannot expect a greater level of freedom from intrusion by the employer than by the general public. By the same token, the employer is not privileged to intrude upon an employee's privacy outside the workplace simply because the employer is otherwise pursuing a legitimate business interest.⁸¹⁸

In order for employees to have a reasonable expectation of privacy in the absence of express policy allowing employee private activity in a particular location, the location must itself be one that is customarily treated as private. The office bathroom is the quintessential example of a work location that is generally treated as a private place. Other places often treated as private include lockers, desks, private offices, and the break room.⁸¹⁹

The employer is subject to liability under this Section for violating an employee's protected autonomy interest recognized in only if the employer lacks a reasonable and good-faith belief that exercising the personal autonomy interest interferes with the employer's legitimate business interests.⁸²⁰ The implied duty of good faith and fair dealing that is contained in every employment agreement and implicit in every employment relationship recognizes that *"by entering into an employment relationship, each party to the relation-ship undertakes a duty to cooperate with the other party in realizing the common purpose of their contractual relationship."*⁸²¹ If the employer discharges an employee because

⁸¹⁷ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

⁸¹⁸ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

⁸¹⁹ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

⁸²⁰ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

⁸²¹ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

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of protected conduct, beliefs, or affiliations without showing the justification required, the employer prevents the employee from performing the employment agreement for reasons unrelated to the requirements of the employment relationship itself.⁸²²

This protection for autonomy is as a default rule. Because it is not established as a common-law tort, it is best addressed as a matter of contract. The default rule recognizes a sphere of protection. The purpose is not only to protect civic and personal life, but also to mirror the likely implicit bargain between the employer and employee about where the employment relationship ends and personal life begins.⁸²³

TERMINATION IN VIOLATION OF PROTECTION AGAINST WRONGFUL EMPLOYER INTRUSIONS INTO PROTECTED EMPLOYEE PRIVACY INTERESTS

An employer who discharges an employee for refusing to consent to a wrongful employer intrusion upon a protected employee privacy interest under this Chapter is subject to liability for wrongful discharge in violation of well-established public policy.⁸²⁴ There are areas of an employee's life in which his employer has no legitimate interest. An intrusion into one of these areas by virtue of the employer's power of discharge might plausibly give rise to a cause of action, particularly when some recognized fact of public policy is threatened.⁸²⁵ When an employee alleges that his or her discharge was related to an employer's invasion of his or her privacy, if the court determined that the discharge was related to a substantial and highly offensive invasion of the employee's privacy, that the discharge violated public policy.⁸²⁶

The employer cannot discharge employees for refusing to waive a nonnegotiable or nonwaivable right. When an employee successfully refuses to submit to an employer's wrongful intrusion into

⁸²² *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

⁸²³ *Restatement of the Law, Employment Law* § 7.03, Protected Employee Privacy Interests in the Employee's Physical Person and in Physical and Electronic Locations, *Comments*

⁸²⁴ *Restatement of the Law, Employment Law* > Chapter 7- Employee Privacy and Autonomy § 7.07, Discharge in Retaliation for Refusing Privacy Invasion

⁸²⁵ *Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611 (3d Cir. 1992); *Geary v. United States Steel Corp.*, 319 A.2d 174 (Pa. 1974)

⁸²⁶ 963 F.2d at 623. See also *Twigg v. Hercules Corp.*, 406 S.E.2d 52, 55 (W. Va. 1990) ("[I]t is contrary to public policy in West Virginia for an employer to require an employee to submit to drug testing, since such testing portends an invasion of an individual's right to privacy.").

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protected employee privacy interests and the employee suffers a termination of employment or such adverse conditions of employment as to amount to a constructive discharge because of the employee's refusal to submit, the employee has a claim for wrongful discharge in violation of public policy. The public policy is the protection against wrongful employer intrusions into protected employee privacy interests.⁸²⁷

The common law is the source for these privacy protections. Courts have also pointed to federal and state constitutional privacy provisions, as well as to federal and state legislation, as additional sources of the public policy underlying employee privacy claims. The purposes of the public-policy cause of action are furthered by enabling the employee to protect his or her personal interests by refusing the intrusion and to resist an employer policy or action that is likely to affect other employees and the public interest.⁸²⁸

Privacy protections are generally the result of a balance among employee privacy interests, employer business interests, and public interests in safety. This policy is critical to the proper enforcement of common-law privacy protections. It is similar to the antiretaliation provisions in many employment-law statutes. Antiretaliation provisions protect employees who exercise their rights under the statutes. The Supreme Court has broadly interpreted statutes protecting employees claiming retaliation for exercising statutory rights⁸²⁹ The decisions recognizing protection against wrongful discharge for privacy violations typically balance the employee's privacy interests and the interests of the employer and society.⁸³⁰

⁸²⁷ *Restatement of the Law, Employment Law > Chapter 7- Employee Privacy and Autonomy*

§ 7.07, Discharge in Retaliation for Refusing Privacy Invasion, *Comment*

⁸²⁸ *Restatement of the Law, Employment Law > Chapter 7- Employee Privacy and Autonomy*

§ 7.07, Discharge in Retaliation for Refusing Privacy Invasion, *Comment*

⁸²⁹ See *Kasten v. Plastic Corp.*, 131 S. Ct. 1325 (2011) (FLSA antiretaliation provision applies to oral as well as written complaints); *LP*, 131 S. Ct. 863 (2011) (Title VII antiretaliation provision prohibits retaliation against the fiancé of an employee who engaged in protected conduct); *County 129 S. Ct. 846* (2009) (Title VII protects against retaliation for speaking about discrimination in an internal investigation) ; See generally Richard Moberly, *The Supreme Court's Antiretaliation Principle*, 61 Case W. Res. L. Rev. 375, 378 (2011). For an insightful discussion of the need for protection against termination based on a refusal to consent to invasions of privacy, see Pauline T. Kim, *Privacy Rights, Public Policy, and the Employment Relationship*, 57 Ohio St. L.J. 671 (1996).

⁸³⁰ See *Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611, 623 (3d Cir. 1992) (applying Pennsylvania law; noting that other courts have "balance[d] the employee's privacy interest against the employer's interests" in determining whether there was a proposed invasion of privacy); *Luedtke v. Nabors Alaska Drilling, Inc.*, 768 P.2d 1123, 1135 (Alaska 1989) (holding that the right to privacy "must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare"); *Gilmore v. Inc.*, 878 P.2d 360, (Okla. 1994) (balancing the employee's concerns against the employer's legitimate interests in a drug-free workplace); *Eagle Point Oil Co.*, 609 A.2d 11, 20 (N.J. 1992) ("[A]lthough employees have a right to be protected from intrusions of privacy, we must also consider the competing public interests in

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Courts have recognized an action for violation of privacy rights even when the employee ultimately agrees to submit to the challenged procedure, either through termination in violation of public policy or through a violation of an implied covenant of good faith and fair dealing..⁸³¹ Numerous courts have recognized that discharge based on an employee's refusal to consent or submit to an invasion of their privacy rights is actionable as a violation of public policy⁸³²

Apple Cares about Privacy, Unless You're an Apple Employee

safety. To constitute a 'clear mandate of public policy' supporting a wrongful-discharge cause of action, the employee's individual right (here, privacy) must outweigh the competing public interest (here, public safety)."); Twigg v. Hercules Corp., 406 S.E.2d 52, 55 (W. Va. 1990) (permitting an employer to compel testing as a condition of employment "based upon reasonable good faith objective suspicion of an employee's drug usage or where an employee's job responsibility involves public safety or the safety of others").

⁸³¹ See, e.g., *v. Inc.*, 878 P.2d 360, 366 (Okla. 1994) (holding that an employer's demand that the employee "undergo a drug test to continue his at-will employment status may be viewed as so intrusive by itself as to meet the *nonconsensual* element of this test"); *Luck v. Southern Pacific Railroad Co.*, 267 Cal. Rptr. 618 (Ct. App. 1990),

⁸³² *v. Nabors Alaska Inc.*, 768 P.2d 1123, 1130 (Alaska 1989) (finding that "there is a public policy supporting the protection of employee privacy" and that "[v]iolation of that policy by an employer may rise to the level of a breach of the implied covenant of good faith and fair dealing"); *Perks v. Firestone Tire & Rubber Co.*, 611 F.2d 1363, 1366 (3d Cir. 1979) (holding that "a cause of action exists under Pennsylvania law for tortious discharge" if the discharge resulted from a refusal to submit to a polygraph examination); *Cordle v. General Hugh Mercer Corp.*, 325 S.E.2d 111, 117 (W. Va. 1984) (holding that termination for refusal to submit to a polygraph test was a wrongful termination in violation of public policy); *Cort v. Bristol-Myers Co.*, 431 N.E.2d 908, 912 n.9 (Mass. 1982) (applying Mass. G.L. ch. 214, § 1B; "[I]n the area of private employment there may be inquiries of a personal nature that are unreasonably intrusive and no business of the employer and that an employee may not be discharged with impunity for failure to answer such requests."); *id.* at 915 (Abrams, J., concurring) (endeavoring to "explicitly state the opinion's underlying premise: that an employee at will has an action for bad faith discharge if an employer discharges the employee for failure to provide private information"); *Hennessey v. Coastal Eagle Point Oil Co.*, 609 A.2d 11, 19 (N.J. 1992) (finding that "existing [New Jersey state] constitutional privacy protections may form the basis for a clear mandate of public policy supporting a wrongful discharge claim"); *Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611, 626 (3d Cir. 1992) (applying Pennsylvania law; holding that "dismissing an employee who refused to consent to urinalysis testing and to personal property searches would violate public policy if the testing tortiously invaded the employee's privacy"); *Health Center v. Court of Co.*, 52 Cal. App. 4th 1234, 1244 (Ct. App. 1997) ("An action for wrongful termination of employment in violation of public policy may lie if the employer conditions employment upon required participation in unlawful conduct by the employee."); *id.* at 1245 (holding that "the constitutional right to privacy [in California] forms a sufficient touchstone of public policy to support [a] wrongful discharge claim"); *Twigg v. Hercules Corp.*, 406 S.E.2d 52, 55 (W. Va. 1990) (finding that mandatory drug testing violated the state's public policy concerning the employee's right of privacy).

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September 15 Emails from Apple Lawyers

September 15, 2021

From: David R. Eberhart, O'Melveny & Myers LLP

To: Ms. Ashley Gjovik

Subject:

File Number: 600,000-3 (Apple Inc.)

Dear Ms. Gjovik:

On behalf of Apple Inc., we write to request that you remove certain images and video that you have displayed publicly in violation of your Confidentiality and Intellectual Property Agreement with Apple dated January 31, 2015 (the "IPA").

The first are the images contained in the following tweet:

<https://twitter.com/ashleygjovik/status/1431824501457633283>⁸³³

As you know, the images are comprised of internal Apple emails regarding a confidential Apple-internal user study project. Please remove those images from any public location and refrain from further public disclosures about that project.

⁸³³ WayBack Machine / Internet Archive:

<https://web.archive.org/web/20210829034222/https://twitter.com/ashleygjovik/status/1431824501457633283>

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The second is the image contained in the following tweet:

<https://twitter.com/ashleygjojik/status/1432400136471072769>⁸³⁴

The related video is located here:

<https://volume-assets.voxmedia.com/production/7739cb4ec481082f874bd63244468b2d/547059/playlist.m3u8>

As you know, that image and video were generated by a confidential internal Apple application during confidential Apple-internal user studies. Please remove that image and video from any public location and refrain from further public disclosures about that application or related user studies.

A copy of the IPA is included with this letter. I am available to discuss this matter at any time. If you are represented by counsel in this matter, please identify your counsel.

Gjovik Reply to Apple Lawyers

Hello David, I hope you're well. Thank you for your email. I disagree that the posts fall under the definition of confidential or proprietary information, but in an effort to resolve the matter amicably, I've removed the two Twitter posts you cited, as requested. As for the video hosted by Vox, I do not have the power to delete it as Vox is in control of their own servers, not me. I am talking others about your request and someone will get back to you related to the Vox hosted video.

September 16 Email from Apple Lawyers

8:49pm

David Eberhard with O'Melveny & Myers

"I look forward to further information about Apple's request to remove the video.

In the meantime, I note that there are additional tweets that also contain the same or similar images from confidential Apple-internal user studies:

<https://twitter.com/ashleygjojik/status/1432381395955900416>⁸³⁵

<https://twitter.com/ashleygjojik/status/1432381497370034184>⁸³⁶

Please remove those images from any public location, remove any similar images, and refrain from further public disclosures of the same or similar information.

⁸³⁴ WayBack Machine | Internet Archive:

<https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjojik/status/1432400136471072769>

⁸³⁵ WayBack Machine | Internet Archive:

<https://web.archive.org/web/20210830170534/https://twitter.com/ashleygjojik/status/1432381395955900416>

⁸³⁶ WayBack Machine | Internet Archive:

<https://web.archive.org/web/20210830170723/https://twitter.com/ashleygjojik/status/1432381497370034184>

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Gjovik Reply to Apple Lawyers

Hi David, Again, I disagree that the posts fall under the definition of confidential or proprietary information, but in an effort to resolve the matter amicably, I've removed the two Twitter posts you cited, as requested.

October 6 2021: Cease & Desist sent to Apple

From: David L. Hecht, Partner
To: David R. Eberhart, O'Melveny & Myers LLP
Cc: Erika Heath, Esq. Ashley M. Gjovik
Date: October 6, 2021
Re: Ashley Gjovik

Dear Mr. Eberhart,

I represent Ms. Gjovik. I am in receipt of your letter dated September 15, 2021 and subsequent email communication with my client. Going forward, please direct all such correspondence to me. As you are aware, Ms. Gjovik has already complied with your September 15, 2021 demand to remove certain images from some of her Twitter posts. However, I write regarding the inappropriateness of your requests, which may comprise copyright misuse. While I understand that Apple is not opposed to taking aggressive litigation postures (and indeed has a history of doing so), I remind you of your ethical duties as an attorney regarding the assertion of claims that have no basis in fact or law.

Your September 15, 2021 letter alleges that Ms. Gjovik violated the Confidentiality and Intellectual Property Agreement with Apple dated January 31, 2015 (the "IPA"). You are incorrect. The IPA does not cover the images/video that Ms. Gjovik posted. For example, you take issue with Ms. Gjovik's post of screenshots of an automated email sent to Ms. Gjovik from "Ask," "an internal survey solution." The email itself was not marked as confidential. Further, there is no suggestion in the email that the in-person study referenced in the email was restricted to Apple employees or that its existence was confidential. The content of the automated email also contained nothing that could be considered secret or otherwise proprietary: there was no disclosure of the content, methodology, identity of any participants in the survey (other than Ms. Gjovik), or any of the survey's findings. The posted image of the email merely noted what was already known to the public: Apple was conducting 3D scans of human ears to "collect representative ear geometry data across age, gender, and ethnic groups" and to benefit "audio research efforts and better our understanding of ear geometry variance." It is no secret that Apple has been scanning a wide range of human ears to perfect its various AirPods products. In fact, Apple's Vice President of Product Marketing, Greg Joswiak, spoke publicly about the 3D ear scans over a year ago:

"We had done work with Stanford to 3D-scan hundreds of different ears and ear styles and shapes in order to make a design that would work as a one-size solution across a broad set of the population," Joswiak says. "With AirPods Pro, we took that research further – studied more ears, more ear types. And that enabled us to develop a design that, along with the three different tip sizes, works across an overwhelming percentage of the worldwide population."

See Jeremy White, The secrets behind the runaway success of Apple's AirPods, Wired (September 5, 2020), available at <https://www.wired.co.uk/article/apple-airpods-success>.

Accordingly, Ms. Gjovik cannot face restriction in disclosing a non-confidential email about the mere existence of a survey concerning 3D ear scanning (scanning that Apple had already publicly disclosed

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much earlier) sent to her during the period in which Apple put her on administrative leave. Apple's demand for Ms. Gjovik to remove such content appears, therefore, to be pretextual.

Your September 15, 2021 letter and subsequent email communication also takes issue with image/video that you contend "were generated by a confidential internal Apple application during confidential Apple-internal user studies." Apple holds no copyright to these images, which were not authored by a human. As you are aware, United States copyright law only protects "the fruits of intellectual labor" that "are founded in the creative powers of the mind." Trade-Mark Cases, 100 U.S. 82, 94 (1879). Because copyright law is limited to "original intellectual conceptions of the author," Apple would be unable to register any of the images or video generated by the "Glimmer" app since a human being did not create the work. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884). Apple therefore cannot allege infringement of any copyright by Ms. Gjovik.

To the extent Apple argues that the images taken by the Glimmer app are confidential, they are not marked as such. You also have not alleged how mere images of Ms. Gjøvik, in her home, taken by the Glimmer app, on Ms. Gjøvik's own phone, could qualify as confidential and/or proprietary information under the IPA. For example, your letter fails to acknowledge that the images posted were (a) taken by an automated process running on Ms. Gjøvik's own iPhone and (b) captured her own likeness and portions of her living space. There can be no doubt that Ms. Ms. Gjøvik is permitted to post to the public her legitimate concerns about images of her, in her home, captured by an automated process, on her own phone. Additionally, your letter fails to acknowledge that beyond the non-proprietary images Ms. Gjøvik posted, she intentionally rendered unreadable any conceivably non-public information when posting these otherwise non-proprietary images. Your claims of any violation of the IPA based on the posting of these images appear, therefore, to have no basis in fact or law.

Given Ms. Gjøvik's removal of the content you referred to, coupled with the infirmities of your intellectual property claims in the September 15, 2021 letter, we consider this issue closed, and expect that Apple will immediately cease sending any further inappropriate demands.

Sincerely, David L. Hecht, Hecht Partners LLP

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The Face “Gobbler”

Apple tells customers, “Privacy is incredibly important to Apple. ... Face ID data doesn’t leave your device and is never backed up to iCloud or anywhere else.”⁸³⁷ On April 24 2019, McKeon posted on LinkedIn an article about privacy, Personally identifiable information (PII) & his work developing Face ID at Apple.⁸³⁸ Robert McKeon, Apple’s “data hungry” “Gobbler” user study manager, explains what PII is in a public article about Apple Face ID development, “PII covers any data that could be linked back to the original subject just by having that data or some combination of data. Face images are inherently PII data. Some times data is PII because when combined with other subject information, you could determine the subject’s identity. The resulting issues with Face ID is clear, but with health data, it may not be obvious to everyone. For example, if I participate in a user study, and some health issue is discovered. If my health insurance company gets a hold of that data, maybe they would increase my rates. I’m not sure what they would do with that data, but people have been known to misuse data and PII data before.”⁸³⁹

Surveillance Laws

FEDERAL

Under the NLRA, employers may not monitor or surveil employees participating in protected concerted activities. In a recent decision by a National Labor Relations Administrative Law Judge, Boeing Corporation was instructed to cease and desist from: creating the impression that its employees protected concerted activities are under surveillance & interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.⁸⁴⁰

The potential for secret video surveillance may itself constitute an intrusion even if the employees have no direct evidence that they were ever captured on video.⁸⁴¹ Intrusion is created by the potential for a hidden camera to record or transmit private images and did not require proof that the

⁸³⁷ Apple, About Face ID advanced technology, <https://support.apple.com/en-us/HT208108>

⁸³⁸ <https://www.linkedin.com/pulse/privacy-machine-learning-pii-robert-mckeon-aloe/>

⁸³⁹ <https://towardsdatascience.com/face-recognition-3d-face-recognition-from-infancy-to-product-209126575b56>

⁸⁴⁰ Gov Docs, More video surveillance in the workplace. But is it legal?, <https://www.govdocs.com/can-employers-use-video-surveillance-monitor-workers/>

⁸⁴¹ *Hernandez v. Hillsides Inc.*, 211 P.3d 1063 (Cal. 2009)

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camera was in fact used in such a manner.⁸⁴² Purpose relates to the result desired by the actor; motive is his subjective reason for desiring the result. Neither purpose nor motive must be proven to show intent. If the videotaping was an act of volition and the resulting exposure of the girls was the expected or natural consequence of that act, intent has been proved.⁸⁴³

Further, 18 U.S.C. § 1801 makes it a federal crime to capture images of a private area of an individual (naked or undergarment clad genitals, pubic area, buttocks, or female breast) without their consent and to knowingly do so under circumstances in which the individual has a reasonable expectation of privacy.⁸⁴⁴ Convictions result in fines and/or up to one year of prison.

CALIFORNIA

The California state Constitution guarantees the privacy of its citizens in the workplace, schools, government buildings and other property. California employees have the right to privacy, even at the workplace, in areas where there is a reasonable expectation of being left alone. For example, the California Labor Code prohibits video or audio monitoring of employees in restrooms, showers, locker rooms, and dressing rooms.⁸⁴⁵ Further, California Penal Code section 647j PC makes it a crime for a person unlawfully to invade someone else's privacy via a device to view in a private room, or by secret recording or photograph of a person's body.⁸⁴⁶ A conviction is a misdemeanor punishable by up to 6 months in jail and/or a fine of up to \$1000.⁸⁴⁷

Gjovik's General Concerns about Surveillance

In August 2021, Gjovik expressed public concerns about Apple Inc pressuring its employees to participate in invasive data collection procedures, including scans of ears/ear canals which Gjovik

⁸⁴² *Koeppel v. Speirs*, 808 N.W.2d 177 (Iowa 2011),

⁸⁴³ *Koeppel v. Speirs Co.*, 383 S.E.2d 2, 7-8 (S.C. Ct. App. 1989) *Johnson v. Allen Inc.*, 211 P.3d 1063, 1079 (Cal. 2009)

⁸⁴⁴ 18 U.S. Code § 1801 - Video voyeurism, <https://www.law.cornell.edu/uscode/text/18/1801>

⁸⁴⁵ California Labor Code § 435, Contracts and Applications for Employment, https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=435.#;:~:text=435

⁸⁴⁶ California Penal Code Section 647(j) PC, Criminal Invasion of Privacy in California,

⁸⁴⁷ California Code, Penal Code - PEN § 647, <https://codes.findlaw.com/ca/penal-code/pen-sect-647.html>

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believed could capture data about employees which could then be used for biometric identification and surveillance.

Around 1am on September 9 2021, the day Gjovik was fired, Gjovik was tipped off that Apple may be surveilling her through her work and personal devices. Gjovik posted publicly about her concerns at 12:06 AM including *“Any reason Apple wouldn’t be reading my [personal] iCloud email and iMessages?”* To which members of the Info Sec community assured Gjovik Apple was doing that and more. Gjovik immediately began removing her data from Apple’s servers.

Bizarrely, two hours later, at 2:27 AM Sept 9 2021, a self-declared “burner” Twitter account, with zero posts or “likes” ever, sent her a direct message accusing her of making a claim that was *“verifiably incorrect and complete misrepresentation of facts.”*⁸⁴⁸ The user claimed that when Gjovik posted she found the *Crystal Brown v Apple* lawsuit, and said Apple settled (which Apple did), she was *“unequivocally misrepresenting facts, most likely with malicious intent.”* *The user said, “as someone attending law school, you should have known better.”* This user would later contact GJOVIK again on January 9 2022 accusing her of committing a federal crime. Gjovik asked the user to identify themselves. The user refused and instead urged her to talk to her lawyer about 18 U.S. Code § 1512, a law Gjovik previously posted publicly she plans to pursue a charge against Apple for violating. It is under information and belief this user was an agent of Apple or acting on Apple’s direction attempting to intimidate Gjovik to stop posting about her surveillance and privacy concerns. Gjovik even responded on Jan 9, saying hi to “Apple Legal” and asking them to leave her alone. The user then deleted it’s account.

Apple’s Face Gobbler App

Apple formally announced Face ID on September 12, 2017.⁸⁴⁹ Apple Platform Security published the following on Apple’s website, *“Face ID provides intuitive and secure authentication enabled by the TrueDepth camera system, which uses advanced technologies to accurately map the*

⁸⁴⁸ @Guybrus55626232, see screenshots

⁸⁴⁹ Apple announced Face ID during the unveiling of the iPhone X on September 12, 2017, <https://www.theverge.com/2017/9/12/16288806/apple-iphone-x-price-release-date-features-announced>

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geometry of a user's face. Face ID uses neural networks for determining attention, matching, and antispooofing.."⁸⁵⁰

Privacy concerns quickly arose after launch, with articles in Nov 2017 covering privacy experts concerns about the privacy of biometrics gathered/stored by Face ID.⁸⁵¹ Concerns were raised by American Civil Liberties Union and the Center for Democracy and Technology and others. The Verge attempted to reassure customers in 2017, saying Apple "*won't send faceprint data to the cloud, which means your face data stays on your phone,*"⁸⁵² however Apple was asking employees to frequently upload their "faceprint data" to Apple and with apple's MDM profiles and other security tools, it's doubtful whether the data would even need to be "uploaded" or if Apple already had access. However, even for customers who supposedly had privacy of their face data, the Verge wrote, "*that's not an absolute assurance. Apple could always break from that playbook in some way they haven't discussed, or hackers could make some incredible new breakthrough.*"⁸⁵³

Verge went on to say, "*Soon, millions of people will be enrolled into Face ID, giving Apple control over a powerful facial recognition tool. In the current system, that data stays on phones, but that could always change. The hashing would make it difficult for anyone other than Apple to use the data, but there's no real limit on what they use it for, particularly if they start to store information outside of specific phones. On Twitter, privacy advocates worried about Face ID data being used for retail surveillance or attention tracking in ads.... with one of the world's most ambitious companies showing off a powerful new toy, it would be foolish not to wonder what comes next.*"⁸⁵⁴

⁸⁵⁰ Apple, <https://support.apple.com/guide/security/touch-id-and-face-id-security-sec067eb0c9e/web>

⁸⁵¹ App developer access to iPhone X face data spooks some privacy experts, <https://www.reuters.com/article/us-apple-iphone-privacy-analysis/app-developer-access-to-iphone-x-face-data-spooks-some-privacy-experts-idUSKBN1D20DZ>

⁸⁵² The five biggest questions about Apple's new facial recognition system, <https://www.theverge.com/2017/9/12/16298156/apple-iphone-x-face-id-security-privacy-police-unlock>

⁸⁵³ The five biggest questions about Apple's new facial recognition system, <https://www.theverge.com/2017/9/12/16298156/apple-iphone-x-face-id-security-privacy-police-unlock>

⁸⁵⁴ The five biggest questions about Apple's new facial recognition system, <https://www.theverge.com/2017/9/12/16298156/apple-iphone-x-face-id-security-privacy-police-unlock>

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Ashley M. Gjovik
@ashleygjovik

Follow

Totally normal. Nothing weird about any of this. Just the video/photos my internal #Apple iPhone captures of me while I'm not paying attention, and stores on device, and also maybe uploads too?

volume-
assets.voxmedia.com/production/773 ...



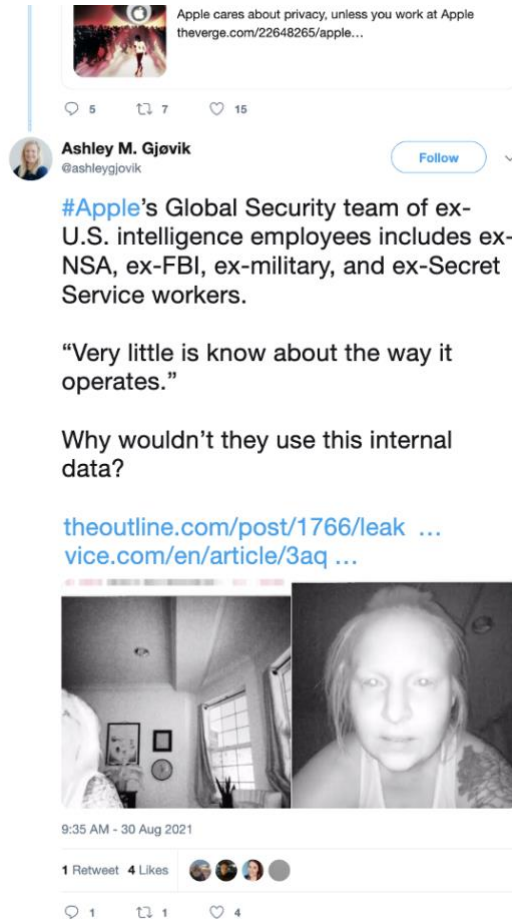
855

⁸⁵⁵ <https://twitter.com/ashleygjovik/status/1432400136471072769>
<https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjovik/status/1432400136471072769>

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856



857

^ The Twitter Posts Apple's Lawyer's Demanded That Gjovik Delete ^

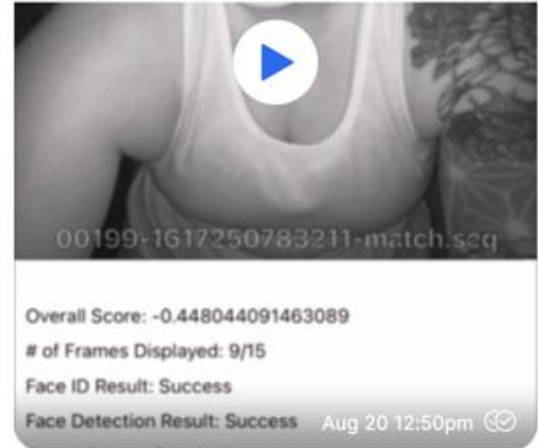
⁸⁵⁶ <https://twitter.com/ashleygjovik/status/1432381395955900416>
<https://web.archive.org/web/20210830170534/https://twitter.com/ashleygjovik/status/1432381395955900416>

⁸⁵⁷ <https://twitter.com/ashleygjovik/status/1432381497370034184>
<https://web.archive.org/web/20210830170723/https://twitter.com/ashleygjovik/status/1432381497370034184>

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Zoe Schiffer



and htere's one topless in those pics i sent... so you can say, indeed an employee saw the app was taking pics of them naked

Aug 20 12:51pm

i was hoping it woudl have caught a more flattering view... but whatever....

Aug 20 12:51pm

i feel like you might be on the floor right now

Aug 20 12:53pm

Lmao this is my face the entire time I'm writing this article

Aug 20 12:53pm



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Zoe Schiffer @



im also changing my mood about maybe letting you use one of the pics it took of me

Aug 20 12:59pm



one of the least awful ones maybe

Aug 20 12:59pm

but remove any code / #s etc

Aug 20 12:59pm

a photo of me is not Apple IP

Aug 20 12:59pm

especially a photo fo me drunk making pirate faces

Aug 20 1:00pm

Hahahaha

Aug 20 1:00pm

Your call but it def like illuminates how invasive this is

Aug 20 1:00pm

So you just lmk

Aug 20 1:00pm

And say which one you're ok with and I'll get the team to redact

Aug 20 1:00pm

righhhhht like did you watch the video is ent

Aug 20 1:08pm

omfg

Aug 20 1:08pm

^ Gjovik's conversations with Zoe Schiffer, The Verge journalist, on August 20, 2021 planning for the article. Gjovik was concerned about retaliation from Apple for mentioning anything about the app, especially providing pictures, but was concerned enough about the intrusion of privacy to go forward. She wanted people to take her concerns about the app seriously and thought the best way to do that was to show how invasive it is.

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Gjovik: I think the best response [to this app] is probably just this face I made. There's one topless in those pics I sent... so you can say, indeed an employee saw the app was taking pics of them naked.

Gjovik: I feel like you might be on the floor right now.

Journalist: LMAO this is my face the entire time I'm writing this article

Gjovik: I'm also changing my mood about maybe letting you use one of the pics it took of me, but remove any code or numbers. A photo of me is not Apple IP; especially a photo of me drunk making pirate faces."

Journalist: [The photos] definitely illuminates how invasive this [app] is. Say which one you're okay with and I'll get the team to redact.

Aug 20 2021

On August 3 2017, Robert McKeon emailed an unknown list of employees, including Gjovik about the Gobbler/Glimmer user study. He said mentioned requirements for participation (having a specific device and disclosure), then installing the Gobbler app. McKeon wrote, "*Then, as you continue to use your device, use the Gobbler application to periodically upload data that has been logged.*" The email went on to say, "*To participate, please take the time to download the ICF (Informed Consent Form) from the Attaché link below and review it. Please select the ICF for the Country/Region you work:*" listing the USA, Brazil, Tel Aviv, and the EU but not France or Germany.

McKeon wrote, "*We have instituted an electronic ICF process, where shortly, you will receive an email from (address) asking you to complete your registration with Gobbler where you will be asked to confirm you have had an opportunity to review this ICF. This will enable you to use*

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Gobbler to upload data.” He said they started a documentation page that employees can reference for help, tips and tricks, but that employees had to be “whitelisted” to participate. McKeon then wrote, “**In terms of data collection, we want more.** The algorithm uses deep learning and the more data the better.” McKeon wrote that the Gobbler algorithms are “hungry for data.” McKeon added, “For uploading data: **all data that has your face in it is good data.**”

GJOVIK DID NOT RESPOND OR ACT ON THE EMAIL; IT WAS A WEIRD EMAIL

On Aug 7 2021 Gjovik received an email from ssp_usg@apple.com with a subject line “Social Hour Study: You're Invited!,” and in the body of the email saying “*Come join us! We look forward to seeing you there!*” The email appeared to be a mandatory social event, though Gjovik was confused that the email said not to attend if she was “*taking photosensitizing medications or have any known photosensitizing medical conditions.*” Gjovik promptly accepted, assuming it was expected of her.

NOTHING IN APPLE’S INVITE SAID IT WAS ABOUT FACE ID/GOBBLER/GLIMMER

Gjovik received another response right after from the same email, subject line “Social Hour Study: Registration.” This time the email said it was from the “Sensor Software & Prototyping User Studies Group.” The email said, “*Hello there! Thank you very much for responding to our invite! You will receive an iCal invite to the event shortly. If you prefer a different day/time than the one scheduled, reply to this email or comment on iCal. Please arrive at MA3B Patio at your scheduled time. Do not hesitate to reach out if you have any questions or concerns regarding the study. See you soon!*” This again sounded like some sort of mandatory social event, however the email also stated “*Prior to your participation, we kindly request that you do the following: Review the ICF and email sign the ICF by registering your email and completing the short pre-study survey that will be sent.*” During Gjovik’s time at Apple, she was forced to sign hundreds of agreements to get access to everything from offices, conference rooms, documentation, and the basic to do her job, so she “signed” the ICF as requested (they did say “*please sign*” after all.) As far as Gjovik can tell, she never received a confirmation she

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signed it, nor did she get a copy of the ICF, and when she tried to access the ICF⁸⁵⁸ again in 2021 the link went to page saying with an error message.

NOTHING IN APPLE’S RESPONSE SAID IT WAS ABOUT FACE ID/GOBBLER/GLIMMER

Gjovik showed up to the “Social Event” as requested. It said to meet in a parking lot south of Infinite Loop but still on Apple property. The temperature that day was very hot. As Gjovik approached the destination, she saw a ~40ft diameter circular compound, with ~10ft high fence around it. There was a chain link fence, with black plastic lining it and then another chain link fence and more black plastic. On top, there were security cameras pointed inside and outside. There were one, maybe two, armed security guards standing outside the compound. One of the guards checked Gjovik in and told her to sit at a picnic table until called. Gjovik was hot, dehydrated, and scared. Gjovik wanted to leave, but didn't want to ask to leave, because then the armed guard might get upset or suspicious, so Gjovik waited. They finally let in 4 or 5 employees. They open the first door of the gate, we go in, then they close the outer gate and open the inner gate -- so no one on the outside could see in. The gate was locked.

Upon entering, the inside of the compound looked like a “luau” with four stations: a picnic table in one quarter, then a bar next to it with a bartender wearing a Hawaiian shirt & a lei, then some kind of game, and the final quarter had a few seats in a circle. There's was music playing in the background & they were told to sit in the circle. The armed guard left and there were two guys left. The bartender guy is at the bar. The other guy sits with us in the circle. Assumed both are Global Security members. The bartender had an intense military mustache and also some sort of military tattoos on his arms. The guy briefing the employees seemed like one of the NSA types, not Marines like the others. The NSA-type guy provided the security briefing. Meanwhile, Gjovik wants out but is locked in a compound with 10ft high gates, security cameras, and an armed guard. She wants to leave but thinks “*I’m too young to die.*”

The NSA-type guy explains what we're doing, we're going to enroll in Face ID and we're going to test it on iPhones with this Gobbler app and we must complete a set list of testing objectives before we are allowed to leave. The ICF had to be complete before we could set up the accounts, and he was

⁸⁵⁸ <https://attache.apple.com/AttacheWeb/gdl?id=e8eb246f-9694-4c1e-859d-2069797f27c2&ek=ydTMSjj3VqcaptLZpe6T2w==>

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helping us set up the Gobbler accounts on the test phones. Then we have to try to enroll in Face ID and then complete our task list. It was like 12 tasks (put sunglasses on & take 10-20x pics, make a goofy face & take 10-20x pics, etc). He explained this testing was specifically because they were having trouble with direct sunlight conditions, so even though they wanted to keep all testing in lockdowns, they set up this compound in the 100-degree sun so we could do real world testing for them.

Gjovik was miserable and wanted to leave, so she did the testing because she wanted to escape the compound. Gjovik knew one of the other employees there, Tim Altman, a QA Manager in Software Engineering, and talked to him a little bit. When they were done, the guard unlocked the inner gate, then had them step in, closed the inner door, and opened the outer door and let them out. After that, the Gobbler app was always pre-installed and logged in on Gjovik's iPhones, even if she changed phones. Gjovik kept trying to log out and turn it off, but it would keep reopening and logging back in and collecting more videos/photos.

On Apple's internal "Living On" help page, it explains that when you "live on" Apple devices, *"You are encouraged to make full use of your living on devices as you regularly would, and try to log as many bugs as possible. This will help us provide a better and bug free product to our customers."*⁸⁵⁹ The page also has a section on Gobbler/Glimmer, explaining *"Glimmer is an app that's included in internal development installs of Face ID equipped devices"* an *"Some data should not be submitted from certain regions."* Another internal page about Glimmer states, "Glimmer is an Apple Internal app which helps gather valuable information for debugging Face ID enrollment and authentication issues." That page said, *"For now, Glimmer is only available for Apple employees working in the United States."* The page suggests uploading data from the app *"captured in employee's homes."*⁸⁶⁰

Apple's internal "Face ID FAQ" page says *"Users are encouraged to use Face ID in all places Touch ID is replaced on iPhone X. This includes for unlock, the App Store and 3rd party apps. Additionally, please use in a variety of conditions: From the bright outdoors to the darkest rooms. In workday, evening and weekend attire. With and without makeup."*⁸⁶¹ It said the Gobbler data *"can be previewed and included in radars and/or donated otherwise via the Gobbler to help make the feature*

⁸⁵⁹ <https://confluence.sd.apple.com/display/DevPubs/Living+On>

⁸⁶⁰ <https://confluence.sd.apple.com/display/FID/Using+Glimmer>

⁸⁶¹ Apple, Face ID FAQ, <https://confluence.sd.apple.com/display/FID/Face+ID+FAQ> Page 1 of 3

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better (there are many other things beside training the neural nets, that the data can be used for to improve the product).” The page did not elaborate further.⁸⁶²

It was extraordinarily unclear what data was being automatically uploaded, how and when. The app & its documentation pages were unclear enough (in 2019 Gjovik saw notes that the app launches automatically, and uploads data automatically, and/or uploads logs at 2am every morning) – but none of this took into account whether the data was being backed up on employee iCloud backups, synced via iCloud, and/or accessed/copied by Apple’s corporate MDM profiles – or other Global Security surveillance of employee phones. It also disturbed Gjovik the app was taking photos/videos without any notification, which made her think that Apple, if it wanted to, could activate her cameras and watch her without her knowing at anytime as well.

In the documentation pages, several restrictions were noted. One said, “Data gathering may be restricted in some countries. You will be notified if that is the case.”⁸⁶³ Another said, “Data privacy laws only allow us to gather and upload data from the US, Canada or Israel. Please do not upload any data gathered outside of these countries.”⁸⁶⁴ Gjovik also saw in notes that the app was forbidden to be used in Japan and China, but then at some point, they decided to gather some logs there anyways. The entire thing seemed incredibly murky and concerning.

Gjovik was Deeply Disturbed by Apple taking Photos 24/7 of her Breasts, her in Bed, her Using the Toilet, and other Inherently Private Things

An individual is protected from retaliation for opposing any unlawful practice. Protected "opposition" activity broadly includes the many ways in which an individual may communicate explicitly or implicitly opposition to perceived employment discrimination. The manner of opposition must be reasonable, and the opposition must be based on a reasonable good faith belief that the conduct opposed is, or could become, unlawful.⁸⁶⁵

⁸⁶² Apple, Face ID FAQ, <https://confluence.sd.apple.com/display/FID/Face+ID+FAQ> Page 1 of 3

⁸⁶³ Standard Operating Procedure (SOP) for Glimmer usage

⁸⁶⁴ Apple, Face ID FAQ, <https://confluence.sd.apple.com/display/FID/Face+ID+FAQ> Page 1 of 3 ;
<https://confluence.sd.apple.com/display/D22Software/ICF+Procedure+for+Gobbler>

⁸⁶⁵ Enforcement Guidance on Retaliation and Related Issues, August 01, 2016, <https://plus.lexis.com/api/permalink/6ee6fa70-59a5-4841-83f4-ffb9a1c6a4be/?context=1530671>

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The opposition clause of Title VII has an "expansive definition," and "great deference" is given to the EEOC's interpretation of opposing conduct.⁸⁶⁶ As the Supreme Court stated in *Crawford v. Metropolitan Government of Nashville and Davidson County*, "[w]hen an employee communicates to her employer a belief that the employer has engaged in . . . a form of employment discrimination, that communication' *virtually always* 'constitutes the employee's *opposition* to the activity.'" ⁸⁶⁷

The opposition clause applies if an individual explicitly or implicitly communicates his or her belief that the matter complained of is, or could become, harassment or other discrimination. The communication itself may be informal and need not include the words "harassment," "discrimination," or any other legal terminology, as long as circumstances show that the individual is conveying opposition or resistance to a perceived potential EEO violation.⁸⁶⁸ However, using the words "harassment" or discrimination" hold weight, as seen in *Ogden v. Wax Works, Inc.*, where there the court found plaintiff "opposed discriminatory conduct" when she told her harasser, who was also her supervisor, to stop harassing her.⁸⁶⁹

The scope of the opposition clause is not limited to complaints made *to the employer*. Complaints about the employer to others that the employer learns about can be protected opposition.⁸⁷⁰ Although opposition typically involves complaints to managers,⁸⁷¹ it may be a reasonable manner of opposition to inform others of alleged discrimination, including others outside the company including:

⁸⁶⁶ *EEOC v. New Breed Logistics*, 783 F.3d 1057, 1067 (6th Cir. 2015) (quoting *Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 579, 580 n.8 (6th Cir. 2000)).

⁸⁶⁷ Enforcement Guidance on Retaliation and Related Issues, August 01, 2016, *Crawford*, 555 U.S. at 276 (first emphasis added) (adopting the Commission's position in the *EEOC Compliance Manual*, as quoted in Brief for the United States as Amicus Curiae).

⁸⁶⁸ *Okoli v. City of Balt.*, 648 F.3d 216, 224 (4th Cir. 2011) (ruling that it was sufficient to constitute "opposition" that plaintiff complained about "harassment" and described some facts about the sexual behavior in the workplace that was unwelcome, and that she did not need to use the term "sexual harassment" or other specific terminology); *EEOC v. Go Daddy Software, Inc.*, 581 F.3d 951, 964 (9th Cir. 2009) (holding that allegations need not have identified all incidents of the discriminatory behavior complained of to constitute opposition because "a complaint about one or more of the comments is protected behavior");

⁸⁶⁹ *Ogden v. Wax Works, Inc.*, 214 F.3d 999, 1007 (8th Cir. 2000) (ruling that reasonable jury could conclude plaintiff "opposed discriminatory conduct" when she told her harasser, who was also her supervisor, to stop harassing her).

⁸⁷⁰ B. Lindemann, P. Grossman, & C. Weirich, *Employment Discrimination Law* 15-20 (5th ed. 2012) (collecting cases).

⁸⁷¹ *Cf. Crawford*, 555 U.S. at 276 (endorsing the EEOC's position that communicating to one's employer a belief that the employer has engaged in employment discrimination "virtually always" constitutes "opposition" to the activity, and stating that any exceptions would be "eccentric cases"); see, e.g., *Minor v. Bostwick Labs., Inc.*, 669 F.3d 428, 438 (4th Cir. 2012) (holding that plaintiff's meeting with a corporate executive to protest a supervisor's direction to falsify time records to avoid overtime was FLSA protected activity).

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coworkers, legislatures, newspaper reporters, or “anyone else.”⁸⁷² Depending on the circumstances, calling public attention to alleged discrimination may constitute reasonable opposition, provided that it is connected to an alleged violation of the EEO laws.⁸⁷³ Opposition may include even activities such as making informal or public protests against discrimination.⁸⁷⁴ Most opposition is “reasonable,” and conduct must be extreme to become unprotected, such as committing or threatening violence to life or property.⁸⁷⁵ As with participation, a retaliation claim based on opposition is not defeated merely because the underlying challenged practice ultimately is found to be lawful.⁸⁷⁶

On August 30 2021, Gjovik expressed OPPOSITION to/about her employer, Apple Inc, in regard to Apple’s DISCRIMINATION & HARASSMENT against her, UNFAIR LABOR PRACTICES, and/or Apple’s unlawful INVASION into her fundamental, constitutionally protected PRIVACY interests.

⁸⁷² See *Pearson v. Mass. Bay Transp. Auth.*, 723 F.3d 36, 42 (1st Cir. 2013) (observing that “there is no dispute that writing one’s legislator is protected conduct”); *Conetta v. Nat’l Hair Care Ctrs., Inc.*, 236 F.3d 67, 76 (1st Cir. 2001) (ruling that employee’s complaints of sexual harassment to coworker who was a son of general manager was protected opposition); *Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 580 (6th Cir. 2000) (stating that “there is no qualification on . . . the party to whom the complaint is made known,” and it may include management, unions, other employees, newspaper reporters, or “anyone else”).

⁸⁷³ *EEOC v. Crown Zellerbach Corp.*, 720 F.2d 1008, 1014 (9th Cir. 1983) (observing that all actions of opposition to an employer’s practices constitute some level of disloyalty, and therefore in order to reach the level of being unreasonable, such opposition must “significantly disrupt[] the workplace” or “directly hinder[]” the plaintiff’s ability to perform his or her job); *EEOC v. Kidney Replacement Servs.*, No. 06-13351, 2007 WL 1218770, at *4-6 (E.D. Mich. 2007) (concluding that medical workers engaged in reasonable opposition when they raised their sexual harassment complaints directly to the onsite supervisor at the correctional facility to which their employer had assigned them, even though they were in effect raising a complaint to their employer’s customer).

⁸⁷⁴ *Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990); see also *Crown Zellerbach*, 720 F.2d at 1013-14 (holding that employer violated Title VII when it imposed disciplinary suspension in retaliation for public protest letter by several employees of an “affirmative action award” given to a major customer; reasoning that even though the letter could potentially harm the employer’s economic interests, it was a reasonable manner of opposition because it did not interfere with job performance).

⁸⁷⁵ Enforcement Guidance on Retaliation and Related Issues, August 01, 2016, <https://plus.lexis.com/api/permalink/6ee6fa70-59a5-4841-83f4-ffb9a1c6a4be/?context=1530671>

⁸⁷⁶ *Trent v. Valley Elec. Ass’n, Inc.*, 41 F.3d 524, 526 (9th Cir. 1994) (“[A] plaintiff [in an opposition case] does not need to prove that the employment practice at issue was in fact unlawful under Title VII . . . [A plaintiff] must only show that she had a “reasonable belief” that the employment practice she protested was prohibited under Title VII.”); see also *Berg v. La Crosse Cooler Co.*, 612 F.2d 1041, 1045 (7th Cir. 1980) (“Limiting retaliation protections to those individuals whose discrimination claims are meritorious would ‘undermine[] Title VII’s central purpose, the elimination of employment discrimination by informal means; destroy[] one of the chief means of achieving that purpose, the frank and non-disruptive exchange of ideas between employers and employees; and serve[] no redeeming statutory or policy purposes of its own.”). For this reason, if an employer takes a materially adverse action against an employee because it concludes that the employee has acted in bad faith in raising EEO allegations, it is not certain to prevail on a retaliation claim, since a jury may conclude that the claim was in fact made in good faith even if the employer subjectively thought otherwise. Cf. *Sanders v. Madison Square Garden*, 525 F. Supp. 2d 364, 367 (S.D.N.Y. Sept. 5, 2007) (“[I]f an employer chooses to fire an employee for making false or bad accusations, he does so at his peril, and takes the risk that a jury will later disagree with his characterization.”) ; see also *supra* note 18.

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GJOVIK’S TWEETS & INTERVIEW WERE OPPOSITION TO PRACTICES BELIEVED TO BE UNLAWFUL

Gjovik was interviewed by Zoe Schiffer at The Verge for an article about a topic that Gjovik has been passionate about for over a decade: digital privacy. Gjovik had grown deeply disturbed by the horrific lack of privacy for Apple corporate employees and was very happy to expose to the issue to the public, as the anti-privacy policy for employees was a “feature” not a “but” to Apple, and thus there was no internal complaint process on the matter, and even if there was, it seemed like a certain way to face additional retaliation. In the article that was published on August 30, Gjovik was quoted as saying / or Schiffer summarized on the following topics:

Gjovik provided Apple’s “*Employee Workplace Search & Privacy Policy*” to Schiffer back in June and Schiffer quoted it for the article.

- Underpinning all of this is a stringent employment agreement that gives Apple the right to conduct extensive employee surveillance, including “physical, video, or electronic surveillance” as well as the ability to “search your workspace such as file cabinets, desks, and offices (even if locked), review phone records, or search any non-Apple property (such as backpacks, purses) on company premises.” Apple also tells employees that they should have “no expectation of privacy when using *your or someone else’s personal devices for Apple business*, when using Apple systems or networks, or when on Apple premises”

Gobbler/Glimmer

- Others have found that when testing new products like Apple’s Face ID, images are recorded every time they open their phones. “If they did this to a customer, people would lose their goddamn minds,” says Ashley Gjøvik, a senior engineering program manager
- In 2017, Apple rolled out an app called Gobbler that would allow employees to test Face ID before it became available to customers. **The process was routine** — Apple often launched new features or apps on employees’ phones, then collected data on how the technology was used to make sure it was ready for launch.
- Gobbler was unique in that it was designed to test face unlock for iPhones and iPads. This meant that every time an employee picked up their phone, the device recorded a short video — hopefully of their face. They could then file “problem reports” on Radar, Apple’s bug tracking system, and include the videos if they found a glitch in the system. **“All data that has your face in it is good data,” said an internal email about the project. After rumors of criticism, Apple eventually changed the codename to “Glimmer.”**
- Unlike other Apple features, Glimmer wasn’t automatically installed on employee phones. It required an informed consent form so employees would know what they were getting into. Still, for some people on engineering teams, **participation was encouraged — even expected**, according to two staff members. Once it was installed, some data that didn’t contain personally

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identifiable information would automatically upload to Radar, unless employees turned off this setting. Apple was careful to instruct employees not to upload anything sensitive, confidential, or private. **But it didn't tell people what was happening with the hundreds of images** they didn't upload in Radar reports.

Radar & Sysdiagnose

- The reports themselves were also a cause for concern. When employees file Radar tickets, they include detailed information about the problems they are seeing. In 2019, Gjøvik filed a ticket about Apple's photo search capabilities. "If I search for 'infant' in my photo library, it returns a selfie I took of myself in bed after laparoscopic surgery to treat my endometriosis," she wrote, including four images in the ticket. The default sharing settings for the ticket included all of software engineering. Radar tickets also are not removable. Even when the tickets are closed, they remain searchable. In training, employees say they are told: "Radar is forever."
- What's more, when employees file Radar tickets, they are often asked to include diagnostic files, internally called "sysdiagnose" to give Apple more information about the problem. If they are filing a bug about iMessage, they might be asked to install a sysdiagnose profile that exposes their iMessages to the team tasked with fixing the issue. For employees using a live-on device, default settings can mean that, as they are filing a Radar ticket, a sysdiagnose profile is being automatically created in the background, sending data to Apple without the employee realizing it. When sysdiagnose profiles are not included, employees have been known to post memes calling out the omission.

Apple Legal taking Gjøvik's nude photos after she was unlawfully constructively terminated during "Batterygate" in 2016, and she believes the nudes were taken as some sort of "collateral" threat:

- The blurring of personal and work accounts has resulted in some unusual situations, including Gjøvik allegedly being forced to hand compromising photos of herself to Apple lawyers when her team became involved in an unrelated legal dispute..... For other employees, however, the mixing of personal and work data has already had real consequences. In 2018, the engineering team Ashley Gjøvik worked on was involved in a lawsuit. The case had nothing to do with Gjøvik personally, but because she'd worked on a project related to the litigation, Apple lawyers needed to collect documents from her phone and work computer. Gjøvik asked the lawyers to confirm that they wouldn't need to access her personal messages. She says her team discouraged the use of two phones; she used the same one for work and personal and, as a result, had private messages on her work device. A member of the legal team responded that while the lawyers did not need to access Gjøvik's photos, they did not want her to delete any messages. During an in-person meeting, Gjøvik says she told the lawyers **the messages included nude photos** she'd sent to a man she was dating — a sushi chef who lived in Hawaii. Surely, those weren't relevant to the lawsuit. Could she delete them? She says the lawyers told her no.

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Apple was contacted several days before the article was published for comment, with the Verge giving Apple insight to the high level topics to be covered. The Verge reported in the article: “Apple did not respond to a request for comment.”⁸⁷⁷

Gjovik’s own Twitter Posts on Aug 30-31 about the Article & her Disclosures Included:

- Apple has an internal culture of **surveillance**, **intimidation**, & alienation. Employees are closely monitored & our data hoarded in the name of secrecy & quality. We’re told we have no expectation of privacy, while Apple says publicly: **privacy is a human right**.⁸⁷⁸
- Apple probably considers what they’re doing to employees “**internal information**.” Why? For secrecy? For quality? Or because Apple knows **the public would be outraged**, & that outrage might start to “deprogram” their employees?⁸⁷⁹
- Cult: “great devotion to a person, idea, object, movement, or work.” Information control: “**encourage spying on other members**” Behavior control: “instill obedience”⁸⁸⁰
- I still love Apple products & brand. I devoted nearly 7 years & much blood/sweat/tears ensuring Apple's products are exceptional. However, Apple the corporation needs a reckoning. **Apple's policy of "secrecy" should not shield it from public scrutiny about human rights & dignity.**
- We’re learning about Apple’s long history of systemic oppression & **retaliation** against employees when employees express concerns about discrimination, harassment, & other abuse. Why wouldn’t Apple try to use our data & their internal **surveillance** infrastructure against us?⁸⁸¹

Like cases of refusing polygraph tests, it doesn’t matter if the employee agreed to take the tests when signing the employment contract, the employee has a statutory right to deny requests for polygraph tests. An employer citing a rule that conflicts with statutorily protected right will not establish disqualifying misconduct. Gjovik is a whistleblower protected by California & federal public policy & anti-retaliation laws. Apple’s reasons for Gjovik’s termination were so farfetched and pretextual, a detailed article was written about exactly that, titled “*Apple Wanted Her Fired. It Settled on an Absurd Excuse.*”⁸⁸² The article explained the background of Gjovik’s whistleblowing at her Superfund office as clearly the actual reason for Gjovik’s termination.

⁸⁷⁷ The Verge, APPLE CARES ABOUT PRIVACY, UNLESS YOU WORK AT APPLE, <https://www.theverge.com/22648265/apple-employee-privacy-icloud-id>

⁸⁷⁸ <https://twitter.com/ashleygjovik/status/1432381777658613762>;
<https://twitter.com/ashleygjovik/status/1432381235926499332>

⁸⁷⁹ <https://twitter.com/ashleygjovik/status/1432383062273191937>

⁸⁸⁰ <https://twitter.com/ashleygjovik/status/1432382993046200323>

⁸⁸¹ <https://twitter.com/ashleygjovik/status/1432381802602110976>

⁸⁸² Gizmodo, <https://gizmodo.com/apple-wanted-her-fired-it-settled-on-an-absurd-excuse-1847868789>

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ASHLEY M. GJØVIK
@ashleygjovik

...

I still love #Apple products & brand. I devoted nearly 7 years & much blood/sweat/tears ensuring Apple's products are exceptional. However, Apple the corporation needs a reckoning. Apple's policy of "secrecy" should not shield it from public scrutiny about human rights & dignity.

Working at Apple in "normal" times, I walked in circles around their glass-walled panopticon, only able to badge into select lockdowns (a constant reminder that Apple has absolute control over my resources and access), and was immersed in a culture where it is implicitly forbidden to critique Apple policies or even speak openly to your coworkers with concerns about your employment & work conditions, lest you upset the cronyism, ex-CIA/ex-FBI security teams, and other "powers that be." I realize now that during those times, I didn't question a lot of things that I should have. Not just the abuse I suffered, but also the constant invasion of privacy — and perhaps those two things are linked.

There seems to be limitless ways Apple can access employee data and monitor us. I recently shared how violating it felt for Apple to demand to copy & permanently store my nudes for completely unrelated litigation. After the public outcry, I questioned other policies & actions Apple had taken. The internal "Glimmer" app had always troubled me, but I never voiced that concern, because inside we don't question the way things are or what we're asked to do. But now, in the light of day, considering everything Apple's already done to me, this app, the photos & data it gathers, and how little we know about what it does with all of that — is deeply troubling and I felt compelled to make it public. Apple's policy of "secrecy" should not shield it from public scrutiny about human rights & dignity.

11:56 AM · Aug 30, 2021 · Twitter Web App

⁸⁸³ <https://twitter.com/ashleygjovik/status/1432416891201490946>

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Protected Concerted Activity

Under the NLRA, “concerted activity” must involve work-related complaint or grievance, further some group interest, seek specific remedy or result, and be not unlawful or otherwise improper.⁸⁸⁴ Concerted activities are protected whether they take place before, after, or at the same time a demand is made.⁸⁸⁵ If an employee acts with or on behalf of other employees, and not solely by and on behalf of the employee alone, in an activity for mutual aid or protection, which includes everything in which the employees could be said to have a legitimate interest, then the employee engaged in a concerted activity.⁸⁸⁶ Employees have the right to engage in concerted activities for their mutual aid or protection even though no union activity be involved or collective bargaining be contemplated.⁸⁸⁷ Employees have a legitimate interest in acting concertedly in making known their views to management without being discharged for that interest.⁸⁸⁸

Amongst other protected activity, Gjovik was organizing with other employees around employee surveillance & data collection concerns. Whether proven with temporal proximity to NLRB charge on August 26th, through a pattern of retaliation animus, or through a direct link if Apple cites the surveillance application – Gjovik is a protected whistleblower.

[Placeholder: add more here later]

Messages between Cher Scarlett & Ashley Gjovik

- July 19 2021
 - o Gjovik: Has there been talk of a class action yet. Maybe you or I can reach out to a class action firm and see “hey any interest in suing the shit out of Apple”
 - o Scarlett: The only thing I heard was via Zoe. I almost wish I needed to ask for accommodations so I could be the one.
- July 20 2021
 - o Gjovik: [NYT article]
 - o Scarlett: Bugs me that no one will touch the disability stuff though.

⁸⁸⁴ *Shelly & Anderson Furniture Manufacturing Co. v. N.L.R.B.* (1974), 497 F 2d 1200.

⁸⁸⁵ *N.L.R.B. v. Washington Aluminum Co.* (1962), 370 US 9, 50 LRRM 2235.

⁸⁸⁶ *Richard Venegas, Laminating Corporation of America*, CUIAB, Case No. 78-1693, No. P-B-399

⁸⁸⁷ *N.L.R.B. v. Phoenix Mutual Life Insurance Co.* (1948), 167 F 2d 983, 6 ALR 2d 408, cert. den. 335 U.S. 845, 93 L Ed 395, 69 S. Ct. 68

⁸⁸⁸ *N.L.R.B. v. Phoenix Mutual Life Insurance Co.* (1948), 167 F 2d 983, 6 ALR 2d 408, cert. den. 335 U.S. 845, 93 L Ed 395, 69 S. Ct. 68

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- Gjovik: I wonder if it was too nebulous about what's actually happening with it for him to tackle in a day. I brought it up with him too.
 - Scarlett: That's probably it. I just don't want to be erased.
- July 23 2021
 - Gjovik [NYT article] I guess if I am going for the jugular about Superfunds, there's probably no need to paint me as a wall flower....
 - Gjovik: The EPA got back to me yesterday and it sounds like they're putting Apple in a time out
 - Scarlett: is that good
 - Gjovik: Very good. There are huge gaps and issues in Apple's oversight of the building and they're being super dodgy about all of it. The guy in charge appears to have just gotten fired. EH&S keeps telling me they won't answer any more of my questions with no explanation why. They found cracks in the floor where the chemicals could be coming from but refuse to test the air for said chemicals until after they fix the floor etc. I also realized a couple weeks ago that one of the Apple board of directors, Sugar, was CEO & President of the company who created the chemical mess under my office, for like 10 years, and now he's chairing Apple's finance committee which I think would oversee budget and stuff for clean ups like this. I've been trying to get the EPA to interrogate everyone to find out what's going on and they were dragging their feed, but finally gave in to my yelling last night.
 - Scarlett: That's awesome
 - Gjovik: I just really want people to stop trying to poison / murder me. Why is that so hard to ask for
 - Scarlett: You would think that would be a given
- Aug 3
 - Gjovik: [Screenshot of Gjovik telling Okpo "I do have a hard stop at 1pm – I have a lunch meeting with the Washington Post"]. So this is where I'm at with Employee Relations
 - Scarlett: Damn. How is WaPo going
 - Gjovik: Ugh these guys. Jack fell through with NYT. Reed is wishy washy with WaPo
 - Scarlett: ugh
 - Gjovik: Reuters reached out too though and CBS. Talking to them tomorrow.
 - Scarlett: [clapping emoji]
 - Gjovik: Zoe will quote me in her sexism piece. She was like should I keep it quiet you're talking to me still and I sent her that screenshot [with Okpo] and I'm like you're good
 - Scarlett: Niceee. Oh I should ping her. I think I'm being underpaid.
 - Gjovik: Really really need to do do a salary spreadsheet thing. And we need dudes to show theirs too. Nike did that and there was a massive lawsuit.
- Aug 4
 - Gjovik: [screenshot of out of office message saying she's on admin leave]
 - Scarlett: WHAT
 - Gjovik: Read above
 - Scarlett: I see. What the fuck
 - Gjovik: #Apple. I told him I wanted to take it tomorrow so I can share my info with the other women and he sent me an email right after saying take it right now.

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- Scarlett: They cannot possibly think this is a good idea.
- Scarlett: I tried to FaceTime you. I'm really freaking out.
- Gjovik: Sorry was with Zoe. One sec.
- Scarlett: oooh ok.
- Aug 13
 - Scarlett: you have a lawyer right
 - Gjovik: I talked to tons of the since January but no one retained. My shits too complicated for them. Because all this started with me saying stop poisoning me thing it means it all hinges on a very niche area of law. They said wait until I get fired and then we'll figure out the various area of law that apple violated & call back. I have been working with a firm in LA since February but they never locked it down. They've been looking over all the new evidence for a week and deciding if they'll take me on. They're supposed to get back today.
 - Gjovik: What if some of us just started tweeting our salaries and levels and shit. Kind of like an Apple age/sex/location but a fuck you to them for what they're doing to you. You think enough people would be willing to make it public to make a statement at least? I would.
 - Scarlett: Mmm idk
 - Gjovik: Apple S/B/R/L/L or whatever. Something in your back pocket. How are you today?
 - Scarlett: Filing a report with business conduct [screenshot]
 - Gjovik: I gave your info to the Information, Wayne Ma, for the Slack piece. Also this is happening, please feel free to share. [see screenshot below]
 - Scarlett: Do you think what's happening to me counts as part of this? Or the women in general
 - Gjovik: I mean they're probably looking for sexism stuff but the pay equity is def that.
 - Scarlett: ya
 - Gjovik: And pay equity now = you. Congrats & condolences
 - Scarlett: Lmao
- Aug 17 1:44pm
 - Scarlett: Shit is so wild. All of it. Draconian.
 - Gjovik: [screenshot of email from Gjovik about Apple skipping the line on vaccines]
 - Gjovik: When I keep saying "tip of the iceberg on Twitter" its less for Twitter and more for Apple cause the shit they're sitting on..
 - Scarlett: I mean for sure they know
 - Gjovik: Did I already tell you about the vaccine thing? There's usually a bigger response to that one. I'm trying to get Reed to write about the vax stuff too. I want them to dig and see if they can find the draft contracts.
 - Scarlett: You didn't.
 - Gjovik: Dec 7 2020 [screenshot] Dan Riccio SVP of Hardware was demoted and reassigned less than 1month after
 - Scarlett: What the fuck
 - Gjovik: [screenshot] Because of me... and Sr Director says "never occurred to me not to believe you."
 - Gjovik: Fuck you Apple ER

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- Scarlett: Thank you for reporting that too
- Gjovik: Oh course, wtf is wrong with them
- Scarlett: Disturbing. Truly.
- Gjovik: I dedicate this one to you [screenshot of tweet yelling about Apple putting Apple Confidential on everything]
- Scarlett: Do you think you and I should be going through the same law firm?
- Scarlett: Also [screenshot of Timnit Gebru Twitter account] Did not notice this
- Gjovik: Lol she is actively plotting with me on Signal. And the Google WalkOut ladies too. We're about to do some shite.
- Scarlett: Wait. Include me. Hello.
- Scarlet: And for lawyer Zoe hooked me up with a NYC lawyer who is putting me on retainer with no fee. Just % of winnings if lawsuit. I just feel so alone and islated. It would be nice to be part of something bigger. And not feel so terrified.
- Gjovik: omg girl ok give me 5min and I'll call you
- Scarlett: Lmao ok thank you
- Aug 17 7:32am
 - Scarlett: HOW DID YOU NOT TELL ME YOU GOT ISSUE CONFIRMATION
 - Scarlett: "Apple Confidential" – As if slapping that on anything makes it covered by NDA
 - Gjovik: they might as well put all caps ASHLEY DON'T TWEET THIS ONE WE MEAN IT THIS TIME
 - Gjovik: Cause that's all they're saying.
- Aug 20 11:57am
 - Scarlett: So my lawyer wants to sue Apple
 - Gjovik: oooh!!
 - Scarlett: I sent them the complaint I sent to business conduct and they were pretty like yes this is a slam dunk and idk what to do. I could proceed I guess and refuse to sign an NDA. Even if that means no \$\$\$. Thoughts?
 - Gjovik: Hmmm yeah this is the tough part. Would you lawyer take the case if you say you'd refuse to sign an NDA? That's usually where I lose lawyers. If you haven't asked, I'd ask. This is where you negotiation with your own lawyer – what you're willing to sign and not sign, how much \$ they'd take etc. they you both figure out if its even worth going forward. Even if you don't sue, you can still keep them in case Appl does something to you, and then renegotiate the plan then
 - Scarlett: Signing and NDA is not in my agreement with them
 - Gjovik: Also if you do sue, are you willing to go through discovery and deposition and all that with apple cause they're notoriously awful
 - Scarlett: Contingency fee I negotiated to 40% which honestly is fine I don't care
 - Gjovik: so is it worth making yourself be abused by them more for the end result. Maybe it is maybe its not
 - Scarlett: I think it is to expose it. Because what have I really done here. They shouldn't have the power to abuse me.

Face Gobbling Comparators & Contrastors

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Apple Platform Security

On Feb 18 2021, Apple Platform Security published the following on Apple’s website, “*Apple developed the facial matching neural networks using over a billion images, including infrared (IR) and depth images collected in studies conducted with the participants’ informed consent. Apple then worked with participants from around the world to include a representative group of people accounting for gender, age, ethnicity, and other factors. The studies were augmented as needed to provide a high degree of accuracy for a diverse range of users.*” ⁸⁸⁹

Was Apple Platform Security fired?

An Apple Engineering Manager, [REDACTED], led the Video Engineering Face ID teams for years, and was DRI for the Gobbler/Glimmer app, and also posted prolifically & publicly about Apple & Face ID internal strategy, for years. [REDACTED] LinkedIn⁸⁹⁰ notes from March 2016 through Jul 2017, he worked on Face ID on the iPhone X including “*DOE [Design of Experiment] for multiple user studies, “Engineering User Studies DOE, Collection, and Analysis.”* [REDACTED] posted publicly that in 2018, he worked on “*Face ID / prototype data collection, logging analysis, DRI for Internal tools for Video Engineering, Coordinated efforts for data collections to improve RGB Face Detector and Portrait Mode, Engineering User Studies & Carry data plus Analysis...*” [REDACTED] posted publicly that in 2019 he worked on “*Face ID internal logs processing pipeline and dashboard, Face ID exploration DOE and analysis, Face ID internal logging analysis, Internal data collection app DRI, & 3D point cloud analysis...*” Finally, [REDACTED] LinkedIn notes in 2020 his key projects included, “*Face ID & People Detection in Magnifier for blind and low-visibility users.*”

[REDACTED] public LinkedIn and Medium posts have included much internal Apple information stretching back to at least 2018 & his LinkedIn implies he’s been promoted and frequently given increasing responsibility, despite his public disclosures. On July 2 2018, [REDACTED] documented Apple’s product development process and posted it on LinkedIn titling it “*Chaos Inducted Prioritization.*”⁸⁹¹ On

⁸⁸⁹ Apple Platform Security: Facial matching security, Published Date: February 18, 2021, <https://support.apple.com/guide/security/facial-matching-security-sece151358d1/web>

⁸⁹⁰ [https://www.linkedin.com/in/\[REDACTED\]](https://www.linkedin.com/in/[REDACTED])

⁸⁹¹ [https://www.linkedin.com/pulse/chaos-induced-prioritization-\[REDACTED\]](https://www.linkedin.com/pulse/chaos-induced-prioritization-[REDACTED])

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Dec 26 2018, ██████ posted on LinkedIn about an internal Apple study he lead which caused an experimental feature to be “put on hold indefinitely.”⁸⁹²

On Feb 26 2019, ██████ posted on LinkedIn about his work on Face ID algorithms. He said, he “*worked on Design of Experiment for user studies, failure analysis, and deep net training.*” ██████ said, “*There was a large list of unknowns because nobody had lived on a phone with Face ID. We had to imagine how people would use the phone and in what ways different from Touch ID to see what data to test. This involved designing the data collection, collecting the data, and analyzing it. We also did any engineering studies requested by others and analyzed the resulting data to understand if we needed more data.*” ██████ wrote that in December he was working on “a large make-up study [he] had spent months designing and doing small engineering studies to help support the DOE.” He said he, “found a lot of incorrect labels from the big user study [he] designed. ...[He] fixed all the labels and finish the analysis.”⁸⁹³

On Jan 9 2019, ██████ posted to LinkedIn an article called “Data Collection” where he wrote, “During the lead up to Face ID being launched, my team went out and collected a large set of potential aggressors to see if we were missing anything in our larger data collections, things would be normal to a regular user.”⁸⁹⁴ On May 13 2019, ██████ posted to LinkedIn about the work Apple did on Face ID, that “**Tons of data was being collected** at the time to cover all the bases.”⁸⁹⁵

On Nov 17 2020, ██████ published an article to Medium titled “Face Recognition: 3D Face Recognition from Infancy to Product.”⁸⁹⁶ ██████ wrote, “*Face ID was a huge project. On initial launch, about 1,000 engineers were working on the entire hardware module, software, and infrastructure.... We collected an amazing amount of data. 1,000,000,000 images were collected as announced in the Keynote. That’s a number difficult to imagine and not just the collection, but the infrastructure and processing requirements to even train an algorithm on such a set of data.*”

He wrote, “*We all learned very quickly that data would solve almost any issue..... We weren’t asked to limit our thinking to what was affordable or possible but to expand our thinking to what was necessary to drive innovation.*”⁸⁹⁷

⁸⁹² <https://www.linkedin.com/pulse/fail-fast-first-████████████████████>

⁸⁹³ <https://www.linkedin.com/pulse/thoughts-leaving-████████████████████aloe/>

⁸⁹⁴ <https://www.linkedin.com/pulse/design-experiment-data-collection-████████████████████>

⁸⁹⁵ <https://www.linkedin.com/pulse/ml-examining-test-set-████████████████████>

⁸⁹⁶ <https://towardsdatascience.com/face-recognition-3d-face-recognition-from-infancy-to-product-209126575b56>

⁸⁹⁷ <https://towardsdatascience.com/face-recognition-3d-face-recognition-from-infancy-to-product-209126575b56>

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Was the manager in charge of Gobbler fired?

Apple formally announced Face ID on September 12, 2017.⁸⁹⁸ However, details of Face ID were “leaked” months prior. On July 30 2017, the Apple Release Mgmt team posted HomePod firmware publicly which included unreleased product details in the code, including Face ID & iPhone X. The press covered the leak, writing: *“code indicates the existence of infra-red face unlock in BiometricKit, which is the framework responsible for Touch ID. The code further suggests that Apple’s face unlock feature will be able to detect partially occluded face and faces from various angles. The codename for the project Pearl ID. The code also shows the iPhone 8 codename as D22.”*⁸⁹⁹

Face ID was further “leaked” on Sept 8 2017 when the to-be released iOS build was made public. This leak was also covered by the press, writing: *“Leaked iPhone 8 firmware reveals animated emoji, Face ID, and updated AirPods.”*⁹⁰⁰ That leak also included *“details on wireless charging and a status bar update in iOS 11. According to the leak, the new facial recognition system will be capable of substituting for Touch ID everywhere the current system is used, both unlocking the phone and confirming purchases on iTunes, the App Store, and Apple Pay.”*⁹⁰¹ One outlet wrote, *“Face ID appears to be the official marketing name for what’s been referenced as Pearl ID, the facial recognition features that will likely replace the Touch ID fingerprint recognition feature.”*⁹⁰²

Gjovik was told by numerous people that both of those leaks came from her previous team in Software Engineering, currently run by [REDACTED] (the guy who used to yelled at her and bring ammo to work). Gjovik was told how the leaks happened (which she will not share here, but an testify if needed). She was told both leaks were attributed directly to [REDACTED] via his negligence, as well as the negligence of [REDACTED] (Gjovik’s previous director). Gjovik was told that [REDACTED] was

⁸⁹⁸ Apple announced Face ID during the unveiling of the iPhone X on September 12, 2017,

<https://www.theverge.com/2017/9/12/16288806/apple-iphone-x-price-release-date-features-announced>

⁸⁹⁹ HomePod firmware seemingly confirms iPhone 8 front design & support for ‘Face ID’, Jul. 30th 2017 , <https://9to5mac.com/2017/07/30/iphone-8-design-and-face-unlock-homepod-code/>

⁹⁰⁰ Leaked iPhone 8 firmware reveals animated emoji, Face ID, and updated AirPods, <https://www.theverge.com/2017/9/9/16280026/apple-iphone-face-id-animoji-features-leak>

⁹⁰¹ iPhone X will unlock with facial recognition instead of the home button, <https://www.theverge.com/2017/9/12/16270352/apple-iphone-x-home-button-removed-unlock-touch-id;>

⁹⁰² iOS 11 GM leak confirms D22 ‘iPhone X’ features: Portrait Lighting, True Tone Display, revised , <https://9to5mac.com/2017/09/08/ios-11-gm-d22-iphone-8-details/>

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demoted from a Director to a Senior Manager following the leaks and that [REDACTED] was given a 30-day notice, directly by Tim Cook, to find a new job at Apple or else would be fired.

Apple accuses Gjovik of sharing information (that was already generally known about a feature released to the public nearly four years ago and/or a topic protected by the California Constitution), and using that to justify their egregious termination of Gjovik. Meanwhile, [REDACTED] and [REDACTED] were responsible for actually “leaking” actual “IP” to the public before a product announce but **were not fired.** [REDACTED] and [REDACTED] were also notorious for a history of bad behavior & discipline during their Apple tenures. **Not fired.** The difference? [REDACTED] and [REDACTED] did not participate in protected activity.

[REDACTED] AND [REDACTED] WERE NOT FIRED.

During the 2017 announce of Face ID, Marketing VP Phil Schiller said, “*To create Face ID we worked with thousands of people across the world and the team took over a billion images*” and with that, “*they developed multiple neural networks.*”⁹⁰³ Schiller said, “*the team even worked with professional mask makers and make-up artists in Hollywood to prevent attempts to beat Face ID.*” He said, “*these are actual masks used by the engineering team to train the neural networks.*”

Was Phil Schiller fired?

An Apple Senior Data Scientist, [REDACTED]⁹⁰⁴ currently includes on her LinkedIn profile that during 2017-2019, she worked in Video Engineering on Face ID. She posted that her role included, “*(Face ID) Data Mining and Algorithm Retrospective Failure Analysis,*” and she “*Built internal dashboard-based website for real-time monitoring of (Face ID) key metrics*” amongst other duties. An Apple Project Manager, [REDACTED],⁹⁰⁵ posted that she worked on Face ID Computer Vision in 2018, with duties including:

- “Project Managed a **highly confidential** Face ID Special Project Task by coordinating and documenting project requirement needs and worked cross-functionally with Video Engineering

⁹⁰³ Apple, Apple iPhone X - Full Announcement From Apple's 2017 Keynote, <https://www.youtube.com/watch?v=Umy1GN3rIJQ>

⁹⁰⁴ [REDACTED]

⁹⁰⁵ [REDACTED]

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team, iPad Product Marketing manager, Face ID Algorithm engineers, and Apple’s Global Security team to **prep for on-site testing of new, unannounced iPad Pro** in an industry-specific facility before product launch.”

- “Led **special iPad Pro QA Mount study in select industry environments**. Documented findings by writing Special Report and presented to top Video Engineering leadership with test findings, recommendations and Call to Action prep for product launch.”

Were [REDACTED] & [REDACTED] fired?

There is plenty of “internal” Apple information available publicly online, seemingly without Apple’s attempting to remove or redact it. For example, there is a wiki page dedicated to internal software builds with screenshots, codenames, builds numbers.⁹⁰⁶ Another page details an internal application used for “flashing iDevices” including mentions of an internal VPN app, source paths, restore components & operations, and troubleshooting.⁹⁰⁷ Another page details internal and factory firmware bundles and yet another discusses internal software updates.⁹⁰⁸

Internal software and application details & screenshots have also been included in forums and discussion threads.⁹⁰⁹ Internal Apple applications are also available for download on archive.org.⁹¹⁰ A 2015 Business Insider article details the following internal applications: AppleConnect, AppleWeb, Retail Daily Download, GKTank, Inferno, iPlano, MobileGenius, MobileRadar, Operator, Receipts, Red Zone Mobile, Skybox, Switchboard, ToughFighter 2, & Unibox.⁹¹¹ A wiki page, created in 2011 & last updated May 2021, lists the names of over a hundred Apple internal apps, tools, and bundles including apps like Glimmer, Magneto, Siri Debug, & LiveOn.⁹¹² Many of the apps listed also link to detailed

⁹⁰⁶ The iPhone Wiki, *Internal UI Builds*, https://www.theiphonewiki.com/wiki/InternalUI_Builds

⁹⁰⁷ The iPhone Wiki, *PurpleRestore*, <https://www.theiphonewiki.com/wiki/PurpleRestore>

⁹⁰⁸ The iPhone Wiki, *Internal Firmware*, https://www.theiphonewiki.com/wiki/Internal_Firmware; *Internal OTA Updates*, https://www.theiphonewiki.com/wiki/Internal_OTA_Updates

⁹⁰⁹ Reddit, *Apple Internal App*, https://web.archive.org/web/20220111143937/https://www.reddit.com/r/Apple_Internal/comments/s1edzi/apple_internal_app; BetaArchive, *Apple Internal Apps*, <https://www.betaarchive.com/forum/viewtopic.php?t=348551>; *Apple Park App*, https://www.reddit.com/r/Apple_Internal/comments/ruasj4/apples_internal_apps_with_apple_park/

⁹¹⁰ Archive.org, *Various macOS Internal Applications*, <https://archive.org/details/macOSInternalApplications>; *Apple Internal Apps*, <https://archive.org/details/troubleshoot-plan-genius-v-1.0>

⁹¹¹ Business Insider, *Here are the secret apps that only Apple employees can use*, Sept 29 2015, <https://www.businessinsider.com/apps-only-apple-employees-get-to-download-and-use-2014-11?op=1>

⁹¹² The iPhone Wiki, *Apple Internal Apps*, https://www.theiphonewiki.com/wiki/Apples_Internal_Apps

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descriptions & screenshots including: iOS Menu,⁹¹³ iTrack,⁹¹⁴ Radar,⁹¹⁵ Tap-to-Radar,⁹¹⁶ Switchboard,⁹¹⁷ PurpleSNIFF,⁹¹⁸ Apple U,⁹¹⁹ & AppleConnect.⁹²⁰

The information currently publicly available about Apple's internal tools must have been provided by numerous current and ex-Apple employees. There is no news coverage or lawsuits to be found of terminations of employees for sharing this type information, nor does it appear Apple has made any effort to take the information down. In addition, this information doesn't seem to be shared in furtherance of any protected topics, contrast with Gjovik's protected disclosures about employee surveillance and intimidation.

Apple, the "Ear Canal Innovator"

Biometrics Laws/Policy

Facial recognition or "faceprinting" uses biological characteristics to verify an individual's identity by extracting an individual's face geometry data in order to confirm a subsequent match of the individual's face. Geometric attributes of faces include distance between the eyes, width of the nose, and other features. Face geometry is a physiological characteristic and qualifies as a "biometric identifier."⁹²¹

Biometrics is "the science of automatic identification or identity verification of individuals using physiological or behavioral characteristics." Traditionally, these physiological traits have included digitally scanned fingerprints, digital photo analysis through facial recognition technology, iris scans, and DNA. Increasingly, physiological identifiers that can be digitally captured, stored, and analyzed include more experimental biometrics, including gait, skeletal bone scans, scars and tattoos, ear shape and eyebrow shape, breathing rates, and eye pupil dilation, among other identifiers.⁹²²

⁹¹³ The iPhone Wiki, iOS Menu, https://www.theiphonewiki.com/wiki/IOS_Menu

⁹¹⁴ The iPhone Wiki, iTrack, https://www.theiphonewiki.com/wiki/IOS_Menu

⁹¹⁵ The iPhone Wiki, Radar, <https://www.theiphonewiki.com/wiki/Radar>

⁹¹⁶ The iPhone Wiki, Tap-to-Radar, <https://www.theiphonewiki.com/wiki/Tap-to-Radar>

⁹¹⁷ The iPhone Wiki, Switchboard, [https://www.theiphonewiki.com/wiki/Switchboard_\(App_Store\)](https://www.theiphonewiki.com/wiki/Switchboard_(App_Store))

⁹¹⁸ The iPhone Wiki, PurpleSNIFF, <https://www.theiphonewiki.com/wiki/PurpleSNIFF>

⁹¹⁹ The iPhone Wiki, Apple U, https://www.theiphonewiki.com/wiki/Apple_U

⁹²⁰ The iPhone Wiki, AppleConnect, [https://www.theiphonewiki.com/wiki/AppleConnect_\(Application\)](https://www.theiphonewiki.com/wiki/AppleConnect_(Application))

⁹²¹ *Hazlitt v. Apple Inc.*, 543 F. Supp. 3d 643, 646 (S.D. Ill. 2021)

⁹²² BIOMETRIC CYBERINTELLIGENCE AND THE POSSE COMITATUS ACT, 66 Emory L.J. 697

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Issues of biometric privacy have arisen with increasing frequency over the last several years as biometric scanners have become cheaper and more prevalent. Though advocates have been sounding the alarm about biometric privacy for decades, by 2018 even Microsoft was calling for greater regulation of facial recognition technology. Along with this increased concern has come a wave of litigation against technology companies that use facial recognition to identify people in photographs and employers that use fingerprint biometric scanners for employee timekeeping. In the trenches of the Northern District of California, for example, Facebook is facing more than \$ 30 billion in potential liability for violations of biometric privacy laws.⁹²³

The Snowden disclosures reveal the increasing importance of biometric data as a component of mass surveillance and a critical tool in intelligence gathering. There is currently a rapid expansion of biometric databases among the intelligence community, the U.S. military, and in the public and private sectors generally.⁹²⁴ The legislature notes that the "overwhelming majority of members of the public are weary of the use of biometrics when such information is tied to finances and other personal information." This is because, unlike social security numbers and other personal information, biometrics "*are biologically unique to the individual so that once compromised, the individual has no recourse, [and] is at heightened risk for identity theft.*"⁹²⁵

An *Applied Intelligence* paper published in October of 2020 explained "that ears have a large amount of specific and unique features that allow for person identification."⁹²⁶ The article explained, "the human ear is a perfect source of data for passive person identification as it does not involve the cooperativeness of the human whom we are trying to recognize" & "acquisition of a human ear is also easy as the ear is visible even in the mask wearing scenarios."⁹²⁷ The article stated tracking ear biometrics "can be useful in identifying persons in a massive crowd when combined with a proper surveillance system."⁹²⁸

⁹²³ ARTICLE: From Identification to Identity Theft: Public Perceptions of Biometric Privacy Harms, 10 U.C. Irvine L. Rev. 107

⁹²⁴ BIOMETRIC CYBERINTELLIGENCE AND THE POSSE COMITATUS ACT, 66 Emory L.J. 697

⁹²⁵ *Monroy v. Shutterfly, Inc.*, No. 16 C 10984, 2017 U.S. Dist. LEXIS 149604, at *3-4 (N.D. Ill. Sep. 15, 2017)

⁹²⁶ Ahila Priyadharshini, R., Arivazhagan, S. & Arun, M. A deep learning approach for person identification using ear biometrics. *Appl Intell* **51**, 2161–2172 (2021). <https://doi.org/10.1007/s10489-020-01995-8>

⁹²⁷ Ahila Priyadharshini, R., Arivazhagan, S. & Arun, M. A deep learning approach for person identification using ear biometrics. *Appl Intell* **51**, 2161–2172 (2021). <https://doi.org/10.1007/s10489-020-01995-8>

⁹²⁸ Ahila Priyadharshini, R., Arivazhagan, S. & Arun, M. A deep learning approach for person identification using ear biometrics. *Appl Intell* **51**, 2161–2172 (2021). <https://doi.org/10.1007/s10489-020-01995-8>

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In 2021, FTC Commissioner Rohit Chopra declared that “Today’s facial recognition surveillance technologies are discriminatory and dangerous.”⁹²⁹ Commissioner Chopra elaborated: “With the tsunami of data being collected on individuals, we need all hands-on deck to keep these companies in check. State and local governments have rightfully taken steps to enact bans, moratoria, and other restrictions on the use of these technologies.”⁹³⁰

After decades of research of anthropometric measurements of ear photographs of thousands of people, it has been found that no two ears are alike, even in the cases of identical and fraternal twins, triplets, and quadruplets. Ear can be easily captured from a distance without a fully cooperative subject although it can sometimes be hidden by hair, muffler, scarf, and earrings. It is possible to use the infrared images of ears to overcome the problem of occlusion of the ear by hair.⁹³¹

The potential cybersurveillance consequences of mass biometric data collection are not yet fully known. What is known, however, is that mass biometric data storage and analysis can lead to multiple unprecedented legal challenges as big data tools and new forms of cybersurveillance technologies place increasing strain on existing privacy law doctrine.⁹³² Studies have also found that generally, people not comfortable with the next generation of biometric uses: using facial recognition.⁹³³

Apple’s Public Information About Ear Studies & Biometrics

On September 5 2020, Apple VP of Marketing , Greg Joswiak (“Joz”) was interviewed by Wired about Apple AirPods.⁹³⁴ “*We had done work with Stanford to **3D-scan hundreds of different ears** and ear styles and shapes in order to make a design that would work as a one-size solution across a broad set of the population,*” Joswiak says. “*With AirPods Pro, we took that research further – **studied more***

⁹²⁹ U.S. Federal Trade Commission, *In the Matter of Everalbum and Paravision*, https://www.ftc.gov/system/files/documents/public_statements/1585858/updated_final_chopra_statement_on_everalbum_for_circulation.pdf ; <https://twitter.com/chopracfpb/status/1348670577050005504>

⁹³⁰ U.S. Federal Trade Commission, *In the Matter of Everalbum and Paravision*, https://www.ftc.gov/system/files/documents/public_statements/1585858/updated_final_chopra_statement_on_everalbum_for_circulation.pdf

⁹³¹ 3D Ear Biometrics BIR BHANU, HUI CHEN, Center for Research in Intelligent Systems, University of California, Riverside, CA, USA , Springer

⁹³² *BIOMETRIC CYBERINTELLIGENCE AND THE POSSE COMITATUS ACT*

⁹³³ ARTICLE: From Identification to Identity Theft: Public Perceptions of Biometric Privacy Harms, 10 U.C. Irvine L. Rev. 107

⁹³⁴ The secrets behind the runaway success of Apple’s AirPods: The wireless headphones have been a surprise hit. Here’s how: Sept 5 2020, <https://www.wired.co.uk/article/apple-airpods-success>

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***ears, more ear types.** And that enabled us to develop a design that, along with the three different tip sizes, works across an overwhelming percentage of the worldwide population.”*

On December 9 2021, two Apple Product Design executives were interviewed by Wallpaper about Apple’s product design team.⁹³⁵ The article said, “When AirPods’ development began a decade or so ago, human factors researcher Kristi Bauerly found herself researching the ‘crazily complex’ human ear. **‘We moulded and scanned ears,** worked with nearby academics, focusing on outer ears for the earbud design and inner ears for the acoustics,’ she says. **Thousands of ears were scanned,** and only by bringing them all together did the company find the ‘design space’ to work within. **‘I think we’ve assembled one of the largest ear libraries anywhere,’** Hankey says. ‘The database is where the design starts,’ Bauerly continues, ‘and then we iterate and reiterate.’ “

On July 28 2021, Apple AI/ML Research published a paper about internal studies they were doing around biometrics (breath rate) and AirPods.⁹³⁶ The paper was further published in August 2021 with IEEE⁹³⁷ & on Apple’s own website.⁹³⁸ “The paper hints at the integration of biometric health sensors in headphones used while participating in sports. The company is ... [a] ear-canal innovator.”⁹³⁹

The 2021 paper notes, “**data was collected from 21 healthy** individuals from both indoor and outdoor environments. Participants spanned the ages of 22 to 60 and were split fairly evenly between genders. Several participants provided six pulse rate measurements per audio sample submitted, each of which spanned a six-minute active period. All data was recorded using microphone-enabled, nearrange headphones, specifically Apple’s AirPods.” Apple noted, “In this paper, we take the first step towards developing a breathlessness measurement tool by estimating respiratory rate (RR) on exertion in a healthy population using audio from wearable headphones.”⁹⁴⁰ The study sounds like another “internal” Apple user study.

⁹³⁵ Inside Apple Park: first look at the design team shaping the future of tech, Dec 9 2021, <https://www.wallpaper.com/design/apple-park-behind-the-scenes-design-team-interview>

⁹³⁶ Estimating Respiratory Rate From Breath Audio Obtained Through Wearable Microphones, [Submitted on 28 Jul 2021], <https://arxiv.org/abs/2107.14028>

⁹³⁷ A. Kumar, V. Mitra, C. Oliver, A. Ullal, M. Biddulph and I. Mance, “Estimating Respiratory Rate From Breath Audio Obtained Through Wearable Microphones,” 2021 43rd Annual International Conference of the IEEE Engineering in Medicine & Biology Society (EMBC), 2021, pp. 7310-7315, doi: 10.1109/EMBC46164.2021.9629661.

⁹³⁸ Estimating Respiratory Rate From Breath Audio Obtained Through Wearable Microphones, August 2021, <https://machinelearning.apple.com/research/estimating-respiratory-rate>

⁹³⁹ Can you ID me now? Apple les for ear- canal biometrics patent, Jan 28, 2022,, <https://www.biometricupdate.com/202201/can-you-id-me-now-apple-files-for-ear-canal-biometrics-patent>

⁹⁴⁰ Estimating Respiratory Rate From Breath Audio Obtained Through Wearable Microphones, August 2021, <https://machinelearning.apple.com/research/estimating-respiratory-rate>

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In August of 2021, Patently Apple wrote that, “*Apple began discussing integrating health sensors into future sports-oriented headphones in a patent application that was published back in April 2009 and filed in 2008. To top it all off, in June of this year, Apple's VP of Technology talked about health sensors on Apple Watch and possibly AirPods.*”⁹⁴¹

Apple is currently hiring for a role, with a description posted on LinkedIn saying, “*As part of the Acoustics User Studies team, you will work closely with acoustic engineers and multi-functional partners to design and **conduct perceptual user studies for new audio feature development.** You will drive the entire end-to-end study cycle, from definition and scope of the study question to data analysis and results delivery. Our team dives deep into emerging technical areas, **such as spatial audio and headphones technologies.** Our Acoustics User Studies team drives the development of groundbreaking audio technologies and products through acoustic and perceptual studies. **We design and carry out studies that influence hardware design, optimize software algorithms, and recommend engineering requirements that are perceptually relevant.***”⁹⁴²

On Dec 20 2020, press covered a new patent from Apple around AirPods biometrics.⁹⁴³ Apple’s patent filings describe a system for deriving biometrics using embedded biometric sensors on the AirPods (Earbuds).⁹⁴⁴ The patent captures waveforms associated with the cycling profusion of blood to the skin, so multiple biometric parameters can be collected, including, for example, heart rate, blood volume, and respiratory rate. By using LEDs that emit different wavelengths of light additional data can be gathered, such as, for example, VO2 max (i.e., the maximal rate of oxygen absorption by the body). A pulse oximeter in the area of the tragus is believed to be particularly accurate. The electrodes on the earbuds can be configured to measure the galvanic skin response (GSR). A GSR can help determine the amount of stress being experienced by the user at any given moment in time. Another use of this design will lend itself well for measuring electrocardiogram (EKG) data or impedance cardiography (ICG) related data.⁹⁴⁵

⁹⁴¹ Apple's Machine Learning Research Team have Published a Paper on using Specialized Health Sensors in Future AirPods, <https://www.patentlyapple.com/patently-apple/2021/08/apples-machine-learning-research-team-have-published-a-paper-on-using-specialized-health-sensors-in-future-airpods.html>

⁹⁴² Apple Perceptual Audio Evaluation Specialist, <https://www.linkedin.com/jobs/view/2975662157>

⁹⁴³ Apple’s future AirPods/earbuds could facilitate biometric measurements, Niel Smith, December 30, 2020 <https://www.myhealthyapple.com/apples-future-airpods-earbuds-could-facilitate-biometric-measurements/>

⁹⁴⁴ Patent number 10856068

⁹⁴⁵ Patent number 10856068

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IT'S NOT A SECRET APPLE DOES USER STUDIES

Just searching LinkedIn for “Apple User Study,” numerous people and positions are returned with detailed descriptions of the roles and projects. Apple is positioning that user studies are inherently secret within Apple. On the contrary, with a quick search I found a role for a “*Engineering Program Manager - User Studies*” that will “Drive user study related requirements (e.g. identify and recruit user study participants, security and legal compliance, logistics, etc.), decision-making and integrity around user study efforts.”⁹⁴⁶ I found a role for, “User Study Operations Manager - Sensing Technologies, which will “*Lead the team that plans and executes user studies and data collection for sensor and health technology development and feature delivery. In this highly visible position, you will collaborate with cross-functional and cross-discipline teams across Apple to execute on user studies ranging from small, focused research studies to large-scale worldwide operations.*”⁹⁴⁷

I found an employee listing his position as “User Study Facilitator at Apple,” with a description of “*Coordinating User Studies for Human Engineering - Physiology Team, Leading participant appointments by communicating study requirements, privacy and legal compliance.*”⁹⁴⁸ I found a role, “Health Study EPM,” that will “Drive user study related requirements (e.g. identify and recruit user study participants, security and legal compliance, logistics, etc.), decision-making and integrity around user study efforts.”⁹⁴⁹ I found a role, “User Study Operations Manager - Sensing Technologies,” that hints to future products saying “*Our study operations have enabled Apple to ship new sensors, multiple health features, and numerous Machine Learning (ML) solutions. But our ambitions are bigger still, with much more to come.*”⁹⁵⁰

I found a role, “User Studies Operations Engineer, that will “will work closely with product development team; designing, leading, executing, and monitoring large-scale studies in support of algorithm development.”⁹⁵¹ I found a “Data Collection Facilitator - Learning and Education,” that will “Conduct in-person user study sessions. Administer screening and consent forms, interview and debrief participants, observe behavior, and administer complex testing protocols involving diverse hardware

⁹⁴⁶ <https://www.linkedin.com/jobs/view/2944349227>

⁹⁴⁷ <https://www.linkedin.com/jobs/view/2942922643>

⁹⁴⁸ Justin Fong, www.linkedin.com/in/justinf2108

⁹⁴⁹ <https://www.linkedin.com/jobs/view/2938135938>

⁹⁵⁰ <https://www.linkedin.com/jobs/view/2911203208>

⁹⁵¹ <https://www.linkedin.com/jobs/view/2944339533>

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*and software.”*⁹⁵² I found a role, “LiveOn Program Manager,” that defines an entire team, “*The LiveOn team grew to enable unreleased products to be “lived on” by Apple employees outside of labs, networks and campuses.*”⁹⁵³

There’s more! I found a role, “ISE, System Experience — Senior User Studies Researcher,” that will “develop and conduct Apple-internal in-person and remote user studies on iOS, iPadOS, and macOS platforms and features.”⁹⁵⁴ I found a role, “Human Factors Engineer – Audio,” that will “Develop user study criteria and detailed methodology for projects which focus on product comfort and span from formative to evaluative and qualitative to quantitative” & “Conduct user-centered research and evaluation on a diverse user population utilizing experimental data and scientific publications,” and that needs “Expertise with biometric data systems (eye tracking, EEG, GSR), Expertise with motion capture systems, and Experience with photogrammetry.”⁹⁵⁵

Gjovik was Deeply Disturbed by the Persistent, Increasing Requests to Image her Ear Canals

On Aug 10 2018 Gjovik was invited to a “HE User Study” for “anthropometry HH” sent by two employees who previous asked for photos of her ears, and discussed wanting to scan her ears. Gjovik replied, “*Hi, I’m sorry - but I need to cancel indefinitely. I really wanted to help with this, but I just started part-time law school. I’m already underwater, and need to focus on my core work responsibilities & school.*” Gjovik assumed she’d be taken off the list for ear studies, if not all user studies.⁹⁵⁶

Then in 2021, while Gjovik was put on Admin Leave in August, she received three separate emails asking to scan her ears/ear canals, again. The email was titled, “HE 3D Ear Scan Invitation!” The emails said, “*You’re invited to a voluntary in-person study where we will capture high-resolution 3D scans of participants’ ears. The goal of this effort is to collect representative ear geometry data across age, gender, and ethnic groups. These 3D scans are extremely valuable to audio research efforts and better our understanding of ear geometry variance.*” The email said she’d be asked to review an ICF

⁹⁵² <https://www.linkedin.com/jobs/view/2944353441>

⁹⁵³ <https://www.linkedin.com/jobs/view/2945797951>

⁹⁵⁴ <https://www.linkedin.com/jobs/view/2944351127>

⁹⁵⁵ <https://www.linkedin.com/jobs/view/2944349447>

⁹⁵⁶ Aug 10 2018, Gjovik to stephanie_juachon@apple.com, yifang_tsai@apple.com

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prior to taking a recruitment survey” and then another ICF for study participation. Gjovik did not respond to any of the emails nor did she sign any of the ICFs.⁹⁵⁷

Gjovik was disturbed by Apple’s lack of respect for its employee’s privacy. She also wondered if Apple could be sending her these on purpose, since she already opted out, in order to harass her further. The emails didn’t say Apple Confidential, nor did they include anything that appeared actually secret or material. Regardless, Gjovik redacted them heavily since her only point was to protest an employer pressuring its employees to gather such sensitive information (biometrics).

GJOVIK’S TWEETS WAS OPPOSITION TO PRACTICES BELIEVED TO BE UNLAWFUL

An individual is protected from retaliation for opposing any unlawful practice. Protected "opposition" activity broadly includes the many ways in which an individual may communicate explicitly or implicitly opposition to perceived employment discrimination. The manner of opposition must be reasonable, and the opposition must be based on a reasonable good faith belief that the conduct opposed is, or could become, unlawful.⁹⁵⁸

The scope of the opposition clause is not limited to complaints made *to the employer*. Complaints about the employer to others that the employer learns about can be protected opposition.⁹⁵⁹ Although opposition typically involves complaints to managers,⁹⁶⁰ it may be a reasonable manner of opposition to inform others of alleged discrimination, including others outside the company including: coworkers, legislatures, **newspaper reporters**, or “**anyone else**.”⁹⁶¹ Depending on the circumstances,

⁹⁵⁷ <https://ask.apple.com/survey/02cf4a74-465b-4669-ba8b-a6717582bc59>

⁹⁵⁸ Enforcement Guidance on Retaliation and Related Issues, August 01, 2016, <https://plus.lexis.com/api/permalink/6ee6fa70-59a5-4841-83f4-ffb9a1c6a4be/?context=1530671>

⁹⁵⁹ B. Lindemann, P. Grossman, & C. Weirich, *Employment Discrimination Law* 15-20 (5th ed. 2012) (collecting cases).

⁹⁶⁰ Cf. *Crawford*, 555 U.S. at 276 (endorsing the EEOC's position that communicating to one's employer a belief that the employer has engaged in employment discrimination "virtually always" constitutes "opposition" to the activity, and stating that any exceptions would be "eccentric cases"); see, e.g., *Minor v. Bostwick Labs., Inc.*, 669 F.3d 428, 438 (4th Cir. 2012) (holding that plaintiff's meeting with a corporate executive to protest a supervisor's direction to falsify time records to avoid overtime was FLSA protected activity).

⁹⁶¹ See *Pearson v. Mass. Bay Transp. Auth.*, 723 F.3d 36, 42 (1st Cir. 2013) (observing that "there is no dispute that writing one's legislator is protected conduct"); *Conetta v. Nat'l Hair Care Ctrs., Inc.*, 236 F.3d 67, 76 (1st Cir. 2001) (ruling that employee's complaints of sexual harassment to coworker who was a son of general manager was protected opposition); *Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 580 (6th Cir. 2000) (stating that "there is no qualification on . . . the party to whom the complaint is made known," and it may include management, unions, other employees, newspaper reporters, or "anyone else").

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calling public attention to alleged discrimination may constitute reasonable opposition, provided that it is connected to an alleged violation of the EEO laws.⁹⁶² Opposition may include even activities such as making informal or public protests against discrimination.⁹⁶³ Most opposition is “reasonable,” and conduct must be extreme to become unprotected, such as committing or threatening violence to life or property.⁹⁶⁴ As with participation, a retaliation claim based on opposition is not defeated merely because the underlying challenged practice ultimately is found to be lawful.⁹⁶⁵

On August 28 2021, Gjovik expressed OPPOSITION to/about her employer, Apple Inc, in regard to Apple’s DISCRIMINATION & HARASSMENT against her, UNFAIR LABOR PRACTICES, and/or Apple’s unlawful INVASION into her fundamental, constitutionally protected PRIVACY interests.

“I’m still over here in Apple’s time-out chair & they keep telling me to respect my abuser’s privacy & be silent. Meanwhile I got 3x of these in the last month since being on leave. NO, APPLE, STOP IT. I can’t tell if they’re harassing me or just being super intrusive or both.”

⁹⁶² *EEOC v. Crown Zellerbach Corp.*, 720 F.2d 1008, 1014 (9th Cir. 1983) (observing that all actions of opposition to an employer's practices constitute some level of disloyalty, and therefore in order to reach the level of being unreasonable, such opposition must "significantly disrupt[] the workplace" or "directly hinder[]" the plaintiff's ability to perform his or her job); *EEOC v. Kidney Replacement Servs.*, No. 06-13351, 2007 WL 1218770, at *4-6 (E.D. Mich. 2007) (concluding that medical workers engaged in reasonable opposition when they raised their sexual harassment complaints directly to the onsite supervisor at the correctional facility to which their employer had assigned them, even though they were in effect raising a complaint to their employer's customer).

⁹⁶³ *Sumner v. U.S. Postal Serv.*, 899 F.2d 203, 209 (2d Cir. 1990); *see also Crown Zellerbach*, 720 F.2d at 1013-14 (holding that employer violated Title VII when it imposed disciplinary suspension in retaliation for public protest letter by several employees of an "affirmative action award" given to a major customer; reasoning that even though the letter could potentially harm the employer's economic interests, it was a reasonable manner of opposition because it did not interfere with job performance).

⁹⁶⁴ Enforcement Guidance on Retaliation and Related Issues, August 01, 2016, <https://plus.lexis.com/api/permalink/6ee6fa70-59a5-4841-83f4-ffb9a1c6a4be/?context=1530671>

⁹⁶⁵ *Trent v. Valley Elec. Ass'n, Inc.*, 41 F.3d 524, 526 (9th Cir. 1994) ("[A] plaintiff [in an opposition case] does not need to prove that the employment practice at issue was in fact unlawful under Title VII . . . [A plaintiff] must only show that she had a "reasonable belief" that the employment practice she protested was prohibited under Title VII."); *see also Berg v. La Crosse Cooler Co.*, 612 F.2d 1041, 1045 (7th Cir. 1980) ("Limiting retaliation protections to those individuals whose discrimination claims are meritorious would 'undermine[] Title VII's central purpose, the elimination of employment discrimination by informal means; destroy[] one of the chief means of achieving that purpose, the frank and non-disruptive exchange of ideas between employers and employees; and serve[] no redeeming statutory or policy purposes of its own."). For this reason, if an employer takes a materially adverse action against an employee because it concludes that the employee has acted in bad faith in raising EEO allegations, it is not certain to prevail on a retaliation claim, since a jury may conclude that the claim was in fact made in good faith even if the employer subjectively thought otherwise. *Cf. Sanders v. Madison Square Garden*, 525 F. Supp. 2d 364, 367 (S.D.N.Y. Sept. 5, 2007) ("[I]f an employer chooses to fire an employee for making false or bad accusations, he does so at his peril, and takes the risk that a jury will later disagree with his characterization.") ; *see also supra* note 18.

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⁹⁶⁶ Aug 28 Twitter Post: <https://twitter.com/ashleygjovik/status/1431824501457633283>
<https://web.archive.org/web/20210829034222/https://twitter.com/ashleygjovik/status/1431824501457633283>

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Ask



Hi Ashley!

You're invited to a voluntary in-person study where we will capture high-resolution 3D scans of participants' ears. The goal of this effort is to collect representative ear geometry data across age, gender, and ethnic groups.

These 3D scans are extremely valuable to audio research efforts and better our understanding of ear geometry variance.

Coercion is not Consent

Companies can process personal data if they obtain either subjects' voluntary affirmative consent to process data for the specific purpose intended or have a legitimate justification. Companies generally cannot rely on blanket consent inserted in an employee contract or handbook to justify either widespread monitoring. Broad consent arguably does not satisfy the GDPR's requirement that the subject affirmatively consent to the specific purpose for which the data will be processed. Consent also must be truly voluntary. As a result, corporations in countries such as Germany and France tend not to rely on consent because employees must be expressly asked for it, must be able to refuse without risk of sanction, and can withdraw it at any time. Moreover, in the corporate investigation context, courts tend to assume that such consent is involuntary because of the imbalance of power between the employer and employee.⁹⁶⁷

U.S. organizations that control or process the personal data of European Union residents likely are subject to the EU's new data protection requirements, the General Data Protection Regulation (GDPR). A common practice in the U.S. is to rely on blanket consent clauses in employment contracts or handbooks that permit employers to process employee personal data. U.S. employers often also rely on implied consent from employees. However, such practices may not be considered valid forms of consent for lawful processing of personal data under the GDPR. The GDPR provides that consent must be "*freely given, specific, informed and unambiguous.*" Moreover, the GDPR adds, consent is

⁹⁶⁷ ARTICLE: THE LAW OF CORPORATE INVESTIGATIONS AND THE GLOBAL EXPANSION OF CORPORATE CRIMINAL ENFORCEMENT, 93 S. Cal. L. Rev. 697 May 2020

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not “freely given” where a “clear imbalance of power” between the data controller (i.e., employer) and the data subject (i.e., employee) exists.⁹⁶⁸

The Article 29 Working Party emphasized the imbalance of power in the employment context: “Given the dependency that results from the employer/employee relationship, it is unlikely that the data subject is able to deny his/her employer consent to data processing without experiencing the fear or real risk of detrimental effects as a result of a refusal. It is unlikely that an employee would be able to respond freely to a request for consent from his/her employer to, for example, activate monitoring systems such as camera-observation in a workplace, or to fill out assessment forms, without feeling any pressure to consent.” The Working Party also advises that the imbalance of power in the employment relationship makes voluntary consent questionable and, for most work-related data processing, the GDPR lawful basis relied upon “cannot and should not” be the employee’s consent.⁹⁶⁹

Employee monitoring may result in the collection of non-employees’ personal data. The GDPR and the BDSG also apply to the collection, processing, and use of non-employees’ personal data. Accordingly, the employer must have a valid legal basis for processing non-employees’ personal data and must notify nonemployees about potential personal data collection.⁹⁷⁰

On Jan 9 2019, McKeon posted to LinkedIn an article called “Data Collection” about Face ID development at Apple, where he wrote, “Some countries allow data like face images to be collected, but the laws vary. The aim is to not be in any gray zone about data. Face images are considered Personally Identifiable Information (PII), and in the past few years, especially since GDPR, governments have paid particular attention to privacy. China, for example, doesn’t allow PII data to be exported. In the US, you can generally collect PII data in public, but in Europe, you can not. Unlike the US, in France and Germany, **they don’t believe an employee can consent to a user study by their employer that collects PII data because the simple employee/employer relationship is a form of coercion.** Usually, there is some compensation for a user study, but keep in mind, too much compensation could also be seen as financial coercion.”

⁹⁶⁸ Is Employee Consent under EU Data Protection Regulation Possible?, Joseph J. Lazzarotti and Maya Atrakchi, February 27, 2018

⁹⁶⁹ Is Employee Consent under EU Data Protection Regulation Possible?, Joseph J. Lazzarotti and Maya Atrakchi, February 27, 2018

⁹⁷⁰ Employee Monitoring (Germany), Resource ID: W-008-3362, HOLGER LUTZ AND SIMONE BACH, BAKER MCKENZIE, WITH PRACTICAL LAW DATA PRIVACY ADVISOR

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The predominant view of the courts, is that consent is not effective if it is not freely given.⁹⁷¹ Consent must be given freely and voluntarily to be valid."⁹⁷² The general rule should be that an employee does not voluntarily consent if the alternative is termination.⁹⁷³ **Even in the context of initial employment, consent to a particular type of invasion does not mean consent to all varieties of that invasion, reasonable or unreasonable.**⁹⁷⁴

CONTRACTS SIGNED BY GJOVIK DURING EMPLOYMENT WITH APPLE WERE COERCED BY APPLE

Multiple GDPR factors invaliding employee to employer consent are present here. First, when Gjovik first responded to the initial email, she had no idea what she consented to/initiated., as it was “*vague or unclear.*” Next, Gjovik has no “*clear records to demonstrate they consented,*” as no receipt was sent and she was never given a copy of the ICF. It appears Apple also no longer has a copy of the ICF, otherwise it seems they would have provided it to Gjovik on Sept 15 or quoted it in their position statement. Next, there was “*a clear imbalance of power between [the employer] and the individual,*” the “*employee would be penalized for refusing consent,*” and “*there was no genuine free choice over whether to opt in.*” Between the general pressure for Apple R&D employees to “live on” new products and software, and to participate in studies, and Gjovik’s performance reviews mentioning her participation in these program, but also that barbed wire, compound with armed guards, too.

Next, apparently later some employees were given the option to use the app but not be “whitelisted” so their PII would not be uploaded, but Gjovik was not given this option nor even told it was an option, so “*consent was a precondition of a service, but the processing is not necessary for that service.*” Finally, once Gjovik apparently signed the ICF and after the Gobbler app was installed on her

⁹⁷¹ See *Stores, Inc. v. Lee*, 74 S.W.3d 634, 647 (Ark. 2002)

⁹⁷² *Papa Gino's of America, Inc.*, 780 F.2d 1067, 1072 (1st Cir. 1986) (applying New Hampshire law; employee contracted away certain rights by accepting employment from employer who forbade drug use, but employer's demand that employee submit to polygraph exceeded scope of employee's consent to allow reasonable investigation into drug use).

⁹⁷³ See *Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611, 625 (3d Cir. 1992) (applying Pennsylvania law and stating that “an employee's consent to a violation of public policy is no defense to a wrongful discharge action when that consent is obtained by the threat of dismissal.”); *Leibowitz v. H.A. Wintson Co.*, 493 A.2d 111, 115 (Pa. Super. Ct. 1985) (employee release authorizing polygraph test is invalid when employer requires employee to sign as a condition of continued employment); *Polsky v. Radio Shack*, 666 F.2d 824, 829 (3d Cir. 1981) (applying Pennsylvania law and stating that “where an employee can show compulsion under threat of job termination to sign a release from liability . . . , the employee need not show duress to invalidate the release because it would contravene Pennsylvania's public policy”);

⁹⁷⁴ *Frye v. IBP, Inc.*, 15 F. Supp. 2d 1032, 1041 (D. Kan. 1998)

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phone (surrounded by armed ex-military), she had no way to disable the app, nor was given anyway to withdraw consent. Gjovik had talked to other employees about the app with similar concerns over the years. Thus, the “consent” was invalid because Apple “*did not tell people about their right to withdraw consent*” and “*people cannot easily withdraw consent.*” ⁹⁷⁵

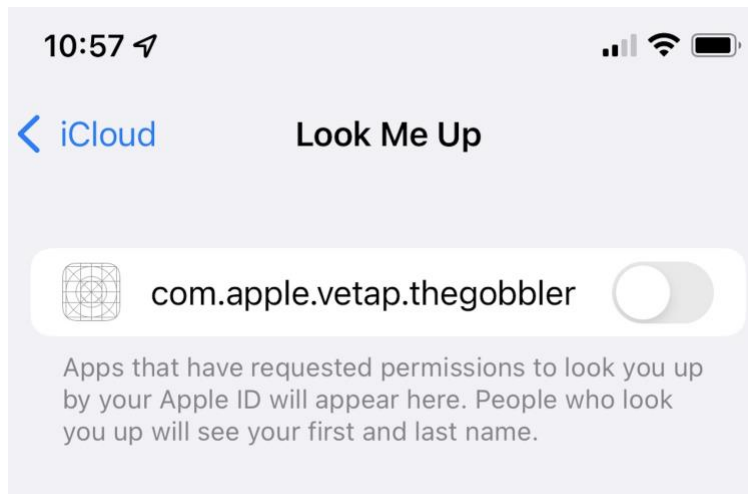
While living on was often an actual responsibility of a role in Gjovik’s Software Engineering team, she continued to feel pressure in Hardware Engineering as well. One example, in Gjovik’s 2019 annual performance review, Powers wrote, “She is an amazing bug finder. Everything she touches seems to break. Said one person, “I’m impressed on ability to find bugs. It’s odd that she just goes about her work yet finds so many panics/hangs on hardware that we say is solid.” It helps that she’s constantly living on as many unreleased products as she can, and is diligent about filing bugs. Good stuff! “⁹⁷⁶ There were many comments like this.

In 2019, Gjovik was injured by her prototype iPhone. She notified the senior manager in Dan Wests org who managed development iPhone quality, Reed Johnson, telling him her iPhone “*flashed a really bright white light*” at her and that it “*hurt her eyes.*” Johnson asked her to report the issue to a Safety team, which she did, and the team took the iPhone from her for failure analysis. The Safety team never told her what happened, but their vague response after testing the device led Gjovik to believe the lasers may have malfunctioned, burning her eyes. The Safety team did not offer any medical evaluation or assistance for Gjovik. There was also no information provided if the “Glimmer/Gobbler” application may have contributed to the injury. Gjovik still found no way disable the app. In fact, as discussed, even after Gjovik was fired, Gobbler was still attempting to access her personal phone.

⁹⁷⁵ Information Commissioner’s Office Consultation: GDPR consent guidance Start date: 2 March 2017 End date: 31 March 2017

⁹⁷⁶ Apple Inc, Ashley Gjovik 2019 Annual Review

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After Gjovik was fired; on her fully personal iPhone

Unconscionability

A contract is unconscionable if one of the parties lacked a meaningful choice in deciding whether to agree and the contract contains terms that are unreasonably favorable to the other party.⁹⁷⁷ Under this standard, the unconscionability doctrine “has both a procedural and a substantive element.” The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power. Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.”⁹⁷⁸ A contract's substantive fairness “must be considered in light of any procedural unconscionability” in its making.⁹⁷⁹ “The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement.”⁹⁸⁰

A procedural unconscionability analysis “begins with an inquiry into whether the contract is one of adhesion.”⁹⁸¹ An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power “on a take-it-or-leave-it basis.”⁹⁸² The pertinent question is

⁹⁷⁷ *Sonic II*, *supra*, 57 Cal.4th at p. 1133.)

⁹⁷⁸ (*Pinnacle*, *supra*, 55 Cal.4th at p. 246.)

⁹⁷⁹ *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 912 [190 Cal. Rptr. 3d 812, 353 P.3d 741]

⁹⁸⁰ *OTO, L.L.C. v. Kho*, 8 Cal. 5th 111, 125-26, 251 Cal. Rptr. 3d 714, 725-26, 447 P.3d 680, 689-90 (2019)

⁹⁸¹ *Armendariz*, *supra*, 24 Cal.4th at p. 113

⁹⁸² *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1245 [200 Cal. Rptr. 3d 7, 367 P.3d 6] (*Baltazar*); see *Armendariz*

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whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required.⁹⁸³

“The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's view of the proposed contract was aided by an attorney.”⁹⁸⁴

Employees who have worked in a job for a substantial length of time have likely come to rely on the benefits of employment. For many, the sudden loss of a job may create major disruptions, including abrupt income reduction and an unplanned reentry into the job market. In both the pre hiring and post hiring settings, courts must be “particularly attuned” to the danger of oppression and overreaching.⁹⁸⁵

Both Ear Canal Scanning & the “Gobbler” Application are both Highly Offensive to the Reasonable Person

The roots of American common-law privacy protections are generally attributed to the “right to be let alone,” which Warren and Brandeis described as “the right of determining, ordinarily, to what extent [a person's] thoughts, sentiments, and emotions shall be communicated to others.”⁹⁸⁶ The tort of wrongful employer intrusion upon a protected employee privacy interest is an application to the employment relationship of the intrusion-upon-seclusion tort developed in Restatement Second, Torts § 652B and adopted by most jurisdictions.⁹⁸⁷ The intrusion tort runs against a person who “intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another” if the intrusion would be “highly offensive to a reasonable person.”⁹⁸⁸

⁹⁸³ See *Baltazar*, at pp. 1245–1246; *Farrar v. Direct Commerce, Inc.* (2017) 9 Cal.App.5th 1257, 1267–1268 [215 Cal. Rptr. 3d 785].)

⁹⁸⁴ (*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348 [182 Cal. Rptr. 3d 235],

⁹⁸⁵ *Armendariz*, at p. 115; see *Baltazar*, *supra*, 62 Cal.4th at p. 1244; *OTO, L.L.C. v. Kho*, 8 Cal. 5th 111, 126–27, 251 Cal. Rptr. 3d 714, 726–27, 447 P.3d 680, 690–91 (2019)

⁹⁸⁶ Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193, 195, 198 (1890)

⁹⁸⁷ *Restatement of the Law, Employment Law*, § 7.01, Employee Right of Privacy

⁹⁸⁸ *Restatement of the Law, Employment Law*, § 7.01, Employee Right of Privacy

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It applies not only to intrusions by those who have no preexisting relationship with the injured person but also to unwarranted, offensive intrusions by parties who have ongoing contacts with each other, such as those in the employment relationship.⁹⁸⁹ In some states, courts have prohibited or regulated certain methods of information collection through the public-policy tort.⁹⁹⁰ The public policy at issue in these cases is the common-law protection from privacy invasions or specific statutes prohibiting certain invasions, such as anti-polygraph statutes.⁹⁹¹

An employer is subject to liability for a wrongful intrusion upon an employee's protected privacy interest if the intrusion would be highly offensive to a reasonable person under the circumstances.⁹⁹² The "highly offensive" test is derived from the intrusion-upon-seclusion tort as established in § 652B of the Restatement Second, Torts. The intrusion has to be "a substantial one, of a kind that would be highly offensive to the ordinary reasonable man, as the result of conduct to which the reasonable man would strongly object."⁹⁹³

Responses to Gjovik's disclosures included, but were not limited to:

- "Excuse me WHAT"⁹⁹⁴
- "This is creepy. I don't have words to express what is running through my head."⁹⁹⁵
- "Straight up abusive and creepy behavior how can deployed iOS devices even run stuff like this?"⁹⁹⁶
- "Whatttt"⁹⁹⁷
- "What the hell..."⁹⁹⁸

⁹⁸⁹ *Restatement of the Law, Employment Law*, § 7.01, Employee Right of Privacy

⁹⁹⁰ See *Perks v. Firestone Tire & Rubber Co.*, 611 F.2d 1363, 1366 (3d Cir. 1979) (holding that "a cause of action exists under Pennsylvania law for tortious discharge" if the discharge resulted from a refusal to submit to polygraph examination, in violation of Pennsylvania's anti-polygraph statute); *Cordell v. General Hugh Mercer Corp.*, 325 S.E.2d 111, 117 (W. Va. 1984) (holding that termination for refusal to submit to polygraph test was a wrongful termination in violation of public policy); *Hennesey v. Coastal Eagle Point Oil Co.*, 609 A.2d 11 (N.J. 1992) (public policy provides restrictions on employer drug testing); *Borse v. Piece Goods Shop, Inc.*, 963 F.2d 611, 626 (3d Cir. 1992) (applying Pennsylvania law; holding that "dismissing an employee who refused to consent to urinalysis testing and to personal property searches would violate public policy if the testing tortiously invaded the employee's privacy"); *Baughman v. Wal-Mart Stores, Inc.*, 592 S.E.2d 824 (W. Va. 2003) (public policy prohibits drug testing of incumbent employees without good-faith objective suspicion of drug use or safety considerations).

⁹⁹¹ *Restatement of the Law, Employment Law*, § 7.01, Employee Right of Privacy

⁹⁹² *Restatement of the Law, Employment Law*, § 7.06, Wrongful Employer Intrusions

⁹⁹³ Restatement Second, Torts § 652B, Comment d.; *Restatement of the Law, Employment Law*, § 7.06, Wrongful Employer Intrusions, *Comments*

⁹⁹⁴ <https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjovik/status/1432400136471072769>

⁹⁹⁵ <https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjovik/status/1432400136471072769>

⁹⁹⁶ <https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjovik/status/1432400136471072769>

⁹⁹⁷ <https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjovik/status/1432400136471072769>

⁹⁹⁸ <https://web.archive.org/web/20210830182052/https://twitter.com/ashleygjovik/status/1432400136471072769>

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- “Ah, but does the employee handbook say workers are human?”⁹⁹⁹
- “I’ve heard a manager say we don’t have civil rights as employees”¹⁰⁰⁰
- “if anyone talks about apple privacy. show them this”¹⁰⁰¹
- “No, just no.”¹⁰⁰²
- This entire article is.. wow.¹⁰⁰³
- Because privacy is a fundamental human right* * that you need to give up to work for the company that cares so much about privacy.¹⁰⁰⁴
- [inserte su referencia a 1984 aquí]¹⁰⁰⁵
- This is terrible and so bothersome on many levels.¹⁰⁰⁶
- Quel enfer...¹⁰⁰⁷

No Warnings or Risk Mitigation

In in four years of Gjovik’s last role at Apple, Gjovik was responsible for ensuring confidentiality, secrecy, and security compliance across David Powers organization as well as with Dan West’s management team. Gjovik was looked to as a guide on Apple’s compliance policies on these matters, and even developed a FAQ page for the organizations employees, working closely with New Product Security and Software Security teams to write the content. Gjovik had to report her own management to the New Product Security team (informally) several times for violating Apple’s confidentiality rules including sharing details of highly secret new hardware and software projects with those who were not “disclosed” on them per Apple policy and process. Gjovik was often looked to by her teammates to weigh in on whether something was confidential or not.

As Apple notes in their position statement, Gjovik had access to an enormous amount of highly sensitive, highly confidential internal information.

Ms. Gjovik Worked at Apple for Six Years in a Role That Furnished Her Access to Highly Confidential Apple Product Information – Which She Agreed to Protect.

As a Senior Engineering Program Manager, Ms. Gjovik had access to proprietary and trade secret information about unreleased products and features under development, which was shared internally only with those who had a business need to know.¹⁰⁰⁸

⁹⁹⁹ <https://twitter.com/ashleygjovik/status/1432381235926499332>

¹⁰⁰⁰ <https://twitter.com/ashleygjovik/status/1432381235926499332>

¹⁰⁰¹ <https://twitter.com/verge/status/1432381006670147587>

¹⁰⁰² https://twitter.com/verge/status/1432381006670147587/retweets/with_comments

¹⁰⁰³ https://twitter.com/verge/status/1432381006670147587/retweets/with_comments

¹⁰⁰⁴ https://twitter.com/verge/status/1432381006670147587/retweets/with_comments

¹⁰⁰⁵ https://twitter.com/verge/status/1432381006670147587/retweets/with_comments

¹⁰⁰⁶ https://twitter.com/verge/status/1432381006670147587/retweets/with_comments

¹⁰⁰⁷ https://twitter.com/verge/status/1432381006670147587/retweets/with_comments

¹⁰⁰⁸ Apple’s US Dept of Labor position statement

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Up until a few hours before she was fired, Gjovik had access to future product roadmaps; unreleased hardware/product design and configuration; future operation system source code; access to all Research & Development finance ordering accounts at the company, including the executive office;¹⁰⁰⁹ information on the manufacturing process and supply chain; competitive analysis; product pricing information; product launch dates; marketing plans; customer feedback and usage trends; access to future software features and projects; access to submit code to the OS releases and view what others submitted.

Gjovik also worked for Apple Legal as an intern and project manager in the summer of 2019, during which time (and probably still in September) she had access to all of Apple's external software- & hardware-related contracts (with Google, Intel, etc); legal strategy around SLAs; open-source software usage, and employee legal training; and other confidential attorney work product.¹⁰¹⁰

Gjovik also worked in a role in 2016 managing software failure analysis for all of Apple's new product launches (iPhone, iPad, Mac, etc). In this role, Gjovik was given access to customer purchase data; product sales data; marketing strategy; customer surveys responses; customer devices and logs; AppleCare support call logs. Gjovik was invited to "closed door meetings" with members of the executive team, to discuss the strategy to address highly sensitive customer hardware and software failures.

Gjovik has not breached and will not breach her duty to keep the above information confidential.

Despite Apple claiming they fired Gjovik for "leaking" confidential information, during those 10-12 days following her supposed "leaks," Gjovik said, "*the company made no attempt to keep her from viewing any sensitive data. I hadn't lost any of my account access. I still had access to the next four years of the Mac roadmap. I still had access to source code for future releases. I still had access to concept review documents.*"¹⁰¹¹ One would think if Apple actually thought Gjovik unlawfully leaked

¹⁰⁰⁹ See Evidence Files: Email from/to Jackie Franks and Tammy Davis on March 9 2017

¹⁰¹⁰ Restatement Third, The Law Governing Lawyers § 109

¹⁰¹¹ Gizmodo, <https://gizmodo.com/apple-wanted-her-fired-it-settled-on-an-absurd-excuse-1847868789>

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information, they would have removed that access immediately. Or sent some sort of warning. Anything. But, there was nothing until an email with no subject line from a Workplace Violence interrogator on Sept 9th.

Gjovik understands her responsibilities under the IPA and has followed the agreement diligently, and has also tried to ensure others do as well, including superiors. In Gjovik's annual performance review feedback to West about Powers in the fall of 2020, she wrote about continued concerns about Powers following his IPA obligations:

“Dave still struggles with security and confidentiality rules and procedure. Not only does he outright resist &/or forget it exists, but he still gives me criticism when I try to ensure we follow the rules provided from NPS, etc. This came up again last year with the issue I raised to you about Jane/ Megan & the very secret project. I thought I got him back on the rails, but looking at my emails from when I was gone, he went back and did it again, despite explicit instructions from NPS to not do what he did. I've explained to him that EPMs are expected to always be the adults in the room, and that I will be held accountable for his actions around secrecy if I'm aware of what he's doing. He still pushes back on me and appears angry when I bring it up.

Gjovik was speaking of Powers behavior during the (non public) early phase of Apple's transition from Intel to Apple silicon for Mac computers (a verry, very secret phase of the project), and Powers frequent deviations from explicit NPS instructions on the matter. Further, Gjovik had also expressed concerns about West's compliance with his IPA to Apple NPS in the past, including but not limited to when West shared the entire future iPad development roadmap with his extended management team without disclosures or need to know. Gjovik reported this issue to NPS and met with them to discuss it. To Gjovik's knowledge, no one followed up with West. (Come to find out, the Global Security manager Gjovik had met with, Scott Nishi, used to manage executive protection at Northrop Grumman before joining Apple.)¹⁰¹²

Another incident was when West wanted to allow all of his employees to bring their (non-employee) families on site into the team's secure lockdowns (a very unusual thing to do with Apple's secrecy policies, and West's team working on prototype hardware). West and Powers were quite laissez-faire about allowing family members to see internal product information, and only insisted the families did not see “prototype hardware.” Gjovik argued with her managers fervently and influenced them to ensure the family members did not see or have access to any internal product information.

¹⁰¹² <https://www.linkedin.com/in/scott-nishi-963591109/>

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However, through the years, West and Powers continued to press on Gjovik that Apple's secrecy rules don't apply to them.

IV. Pretext

In proving pretext, the complainant shows that the employer's explanation is a 'phony reason.'¹⁰¹³ An employee may offer evidence "that the employer's proffered explanation is unworthy of credence."¹⁰¹⁴ Without direct evidence of pretext, the plaintiff must prove pretext indirectly by showing one of the following: (1) Defendant's explanation of Plaintiff's discharge had no basis in fact, or (2) the explanation was not the 'real' reason, or (3) at least the reason stated was insufficient to warrant the allegedly discriminatory action.¹⁰¹⁵ The evidence may include, for example, suspicious timing, verbal or written statements, comparative evidence that a similarly situated employee was treated differently, falsity of the employer's proffered reason for the adverse action, or any other pieces of evidence which, when viewed together, may permit an inference of retaliatory intent.¹⁰¹⁶

Adverse actions retaliatory can be found when the employer engages in a bad faith or a sham internal investigation against an employee after the employee blew the whistle about conduct. Pretext was found when a defendant launched investigation into allegedly improper conduct by plaintiff shortly after she engaged in protected activity.¹⁰¹⁷ The offered reason for a termination "distracting other workers" was found to be pretext when it was not mentioned in the termination notice and the employer had two opportunities to stop the distraction but did not act.¹⁰¹⁸

Actions related to the continued processing of a complaint may remind an employer of its pendency or stoke an employer's animus. Moreover, an opportunity to engage in a retaliatory act may not arise right away. In these circumstances, a materially adverse action might occur long after the

¹⁰¹³ USDOL/OALJ Reporter (HTML) at 8, quoting *Kahn v. U.S. Secretary of Labor*, 64 F.3d 271, 277 (7th Cir. 1995), citing *Pignato v. Am. Trans Air, Inc.*, 14 F.3d 342, 349 (7th Cir. 1994); *Gale v. Ocean Imaging*, ARB No. 98 143, ALJ No. 1997 ERA 38 (ARB July 31, 2002),

¹⁰¹⁴ *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1091 (9th Cir. 2008); *Cornwell*, 439 F.3d at 1028 (quoting *Texas Dep't of Cmty. Affairs*, 450 U.S. at 256)

¹⁰¹⁵ *Lenoir v. Roll Coater, Inc.*, 13 F.3d 1130, 1133 (7th Cir. 1994) (citing *Smith v. General Scanning, Inc.*, 876 F.2d 1315, 1319 (7th Cir. 1989)). *Johnson v. Nordstrom, Inc.*, 260 F.3d 727, 732 (7th Cir. 2001)

¹⁰¹⁶ *Ortiz*, 2016 WL 4411434, at *34. *Hossaini v. W. Mo. Med. Ctr.*, 97 F.3d 1085, 1089 (8th Cir. 1996)

¹⁰¹⁷ *Hossaini v. W. Mo. Med. Ctr.*, 97 F.3d 1085, 1089 (8th Cir. 1996)

¹⁰¹⁸ *Priest v Baldwin Associates*, 84-ERA-30 (Sec'y June 11, 1986),

EXHIBIT I

IMPORTANT DATES:

Aug. 4 2021 – Apple puts Gjovik on indefinite administrative leave.

Aug. 12 2021 – Court decision in favor of employee in *Schulze v. Apple* (a different employment case with these same attorneys).

Aug. 12 2021 – Gjovik files an EEOC complaint against Apple.

Aug. 12 2021 – Bizzie Wacks (Twitter account) appears.

Aug. 21 2021 – Mel Nayer (Twitter account) appears.

Aug. 26 2021 – Gjovik files a NLRB charge against Apple.

Aug. 29 2021 – Apple claims it started investigating Gjovik.

Sept. 9 2021 – Apple fires Gjovik.

Sept. 15 2021 – Appleseed files a complaint and Apple’s counsel (OMM) email Gjovik to complain about her social media posts.

Sept. 16 2021 – I’mPinkThereforeI’mSpam (Twitter account) appears.

Dec. 10 2021 – U.S. Dept. of Labor case docketed.

Jan. 7 2022 – Orrick files Notice of Rep. for Apple in the U.S. Dept of Labor case.

Jan. 10 2022 – Gjovik files third NLRB charge against Apple.

Jan. 10 2022 – FirstNameBunchofNumbers (Twitter account) appears.

Jan. 15 2022 – Further Parthing (Twitter account) appears.

Jan. 31 2022 – Appleseed sues Gjovik.

Feb. 5 2022 – Appleseed threatens Gjovik to withdraw testimony & evidence.

March 1 2022 – Gag order issued against Gjovik by the state of Washington.

March 4 2022 – Orrick files its position statement to U.S. Dept of Labor.

March 4 2022 – A law firm, assumably Orrick, picks up a copy of the gag order issued against Gjovik on March 1 2022.

March 2022 – Twitter accounts go inactive.

Nov. 14 2022 – Gag order against Gjovik is reversed following successful appeal.

Nov. 17 2022 – Orrick lawyers report Gjovik’s OSHA complaint to OSHA as “leaking.”

Jan. 23 2023 – NLRB finds in favor of Gjovik on the unlawful work policies & NDAs charges.

Jan. 26 2023 – Appleseed testifies against Gjovik to U.S. Dept of Labor.

Beezie Wacks (@beezie_wacks)

[accountanalysis](#)

60 Tweets

Load More

@beezie_wacks

Analyze

60 selected out of 60 retrieved Tweets.

**Beezie Wacks**

@beezie_wacks


60 **350** **2** **186** **0**

TWEETS FOLLOWING FOLLOWERS LIKES LISTED

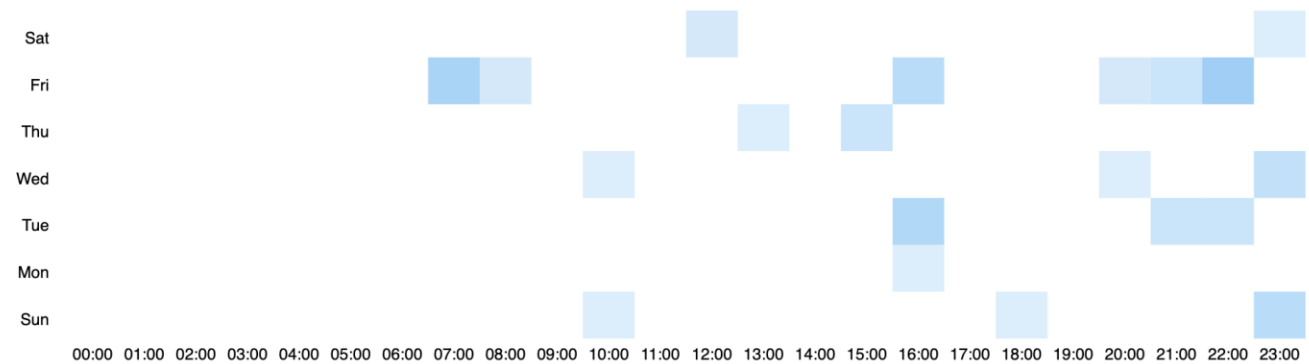
Cetaphiliac

2021-08-05, 00:26 (6 months ago)

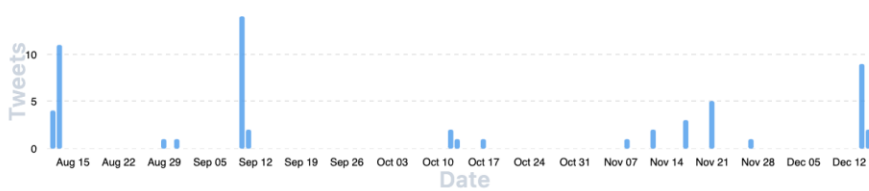
1423183498290941952

Sunnyvale, CA

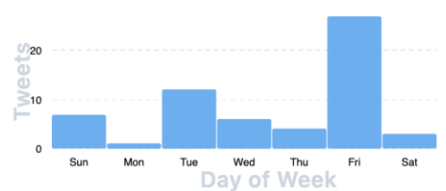
Daily Rhythm



Tweetvolume by Date



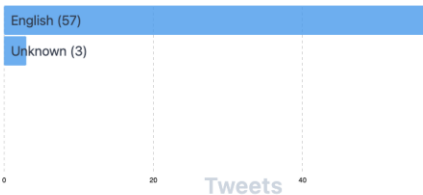
Day of Week



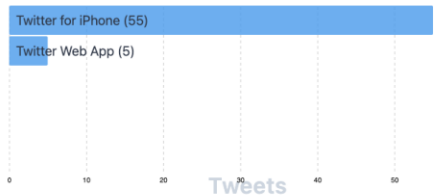
Tweet Type

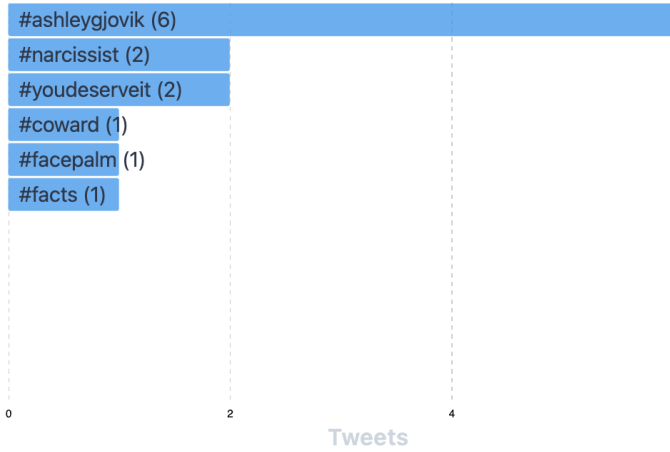
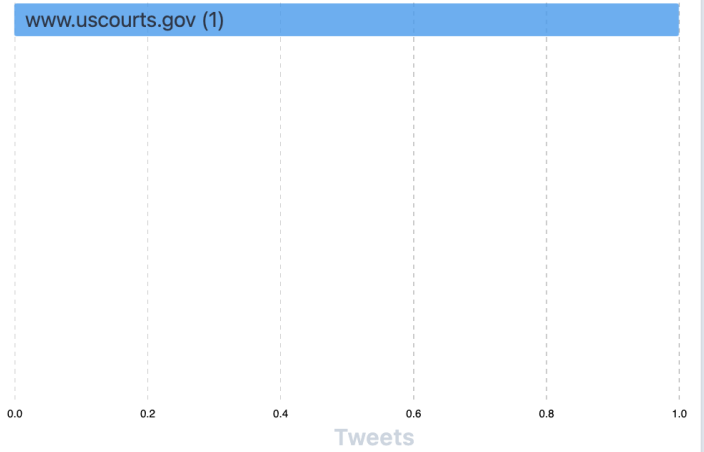
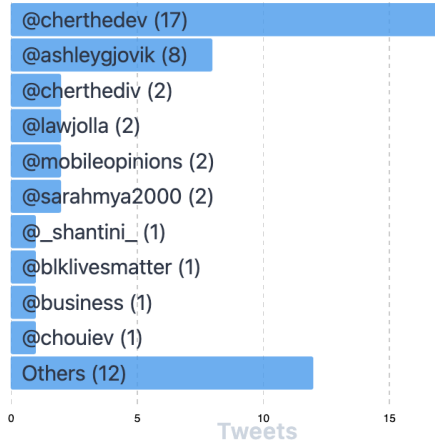
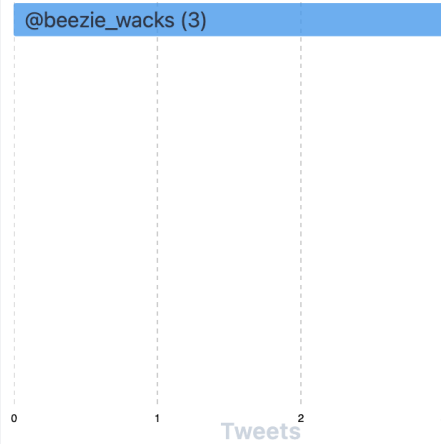
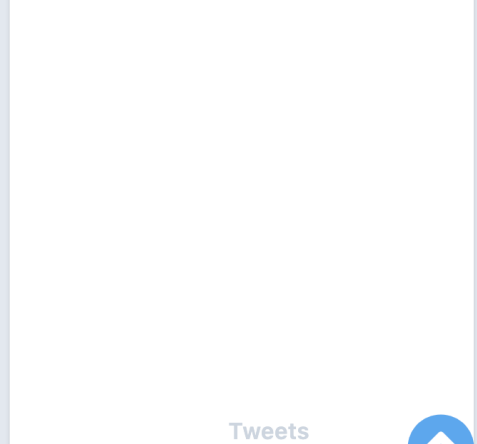


Language of Tweets



Used Interface



Used Hashtags**Hostnames of URLs****Replied Users****Retweeted Users****Quoted Users**

**Beezie Wacks**

@beezie_wacks

...

Replying to @ashleygjovik

So basically, anyone who talks to you is gonna get outed on any public forum you post to? Are you someone who can be trusted, like ever? If you're gonna be a lawyer, who has attorney-client expectations, what client will trust you won't use their words against them later?

1:47 PM · Aug 12, 2021 · Twitter for iPhone

1 Quote Tweet



Tip



Tweet your reply

Reply

**Linda Dong** 🍉 @lindadong · Aug 12

...

Replying to @beezie_wacks and @ashleygjovik

You only follow 3 female apple employees



Tip

More Replies

**Secret Lair Arcade** @LairArcade · Aug 12

...

Replying to @beezie_wacks and @ashleygjovik

Who are you?



Tip

**Beezie Wacks** @beezie_wacks · Aug 13

...

You remind me of the babe!



Tip



Ashley M. Gjovik @ashleygjovik · Aug 13

...

I'm fairly sure EEOC only applies if you're my employer. Are you trying to tell me something, Beezie?

Tim, is that you?



Beezie Wacks @beezie_wacks · Aug 13

Replying to @ashleygjovik

Wow. Gaslight, much? Two posts, one asking about your execution of confidentiality is "harassment?" [eeoc.gov/harassment](https://www.eeoc.gov/harassment) - do provide.

2



8



Tip



Beezie Wacks @beezie_wacks · Aug 13

...



1



Tip



Ashley M. Gjovik @ashleygjovik · Aug 13

You created a Twitter account just to harass me... I think you mean "we pay you too much," Beezie.

Beezie Wacks
8 Tweets
Follow

Beezie Wacks @beezie_wacks · Aug 12
 Replying to @ashleygjovik
 So basically, anyone who talks to you is gonna get outed on any public forum you post to? Are you someone who can be trusted, like ever? If you're gonna be a lawyer, who has attorney-client expectations, what client will trust you won't use their words against them later?

2
 1

Beezie Wacks @beezie_wacks · Aug 13
 Replying to @ashleygjovik
 Clearly, they paid you too much for tweeting.

1

 9

 Tip

[Show more replies](#)



Ashley M. Gjovik @ashleygjovik · Aug 13

Replying to @beezie_wacks

You sure know a lot about employment law, Beezie.

1

 1



 Tip



Beezie Wacks @beezie_wacks · Aug 13



**Beezie Wacks** @beezie_wacks · Sep 10
Or maybe she simply violated policies and truly believed she could get away with it. [#facts](#)

 Tip

**Beezie Wacks** @beezie_wacks · Sep 10
Replying to [@business](#)
Apparently, “work” doesn’t mean what she thinks it means. And why did she have nude photos on her work-issued phone?? [#facepalm](#)

13 Tip

**Tweet**

**I'mPinkThereforeI'mSpam** @i_mspam
Replying to [@ashleygjovik](#) and [@B_Schmidt](#)
You'll never work as an attorney
11:42 PM · Sep 16, 2021 · Twitter Web App

 Tip

**Liked by**

**Beezie Wacks** @beezie_wacks
Cetaphiliac

Follow

**Beezie Wacks** @beezie_wacks · Sep 10

...

Did you ever notice that [#ashleygjovik](#) would block or disparage anyone who disagreed with her and accuse them of bullying? [#classicnarcissist](#) [#narcissist](#) [#abuse](#) [#blockedbyashley](#)

**Beezie Wacks** @beezie_wacks · Sep 10

...

[#ashleygjovik](#) how many times did you retweet your quotes about his devastated you are to lose you job at the company you loved so much as a G3-using child? Do you love yourself that much that you set a new bar for narcissism? [#ashleythenarcissist](#)

**Beezie Wacks** @beezie_wacks · Sep 10

...

What's been a travesty is seeing all the people who joined [#ashleygjovik](#) in her narcissistic rage fest. What good has she done for humanity other than demonstrate that behaving like a child in the Twitterverse gets you fired? Thanks for the lesson!

**Beezie Wacks**
@beezie_wacks

...

What's been a travesty is seeing all the people who joined [#ashleygjovik](#) in her narcissistic rage fest. What good has she done for humanity other than demonstrate that behaving like a child in the Twitterverse gets you fired? Thanks for the lesson!

7:36 AM · Sep 10, 2021 · Twitter for iPhone

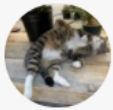
**Beezie Wacks** @beezie_wacks · Sep 10

...

What's been a travesty is seeing all the people who joined [#ashleygjovik](#) in her narcissistic rage fest. What good has she done for humanity other than demonstrate that behaving like a child in the Twitterverse gets you fired? Thanks for the lesson!



Promoted Tweet



Beezie Wacks @beezie_wacks · Sep 10



[#ashleygjovik](#) the world is both pandering to you and also reaming you. This sounds about right. [#narcissist](#) [#youdeserveit](#) [#coward](#)



Beezie Wacks @beezie_wacks · Sep 10



[#ashleygjovik](#) was such a tool..used by others to make a point, and by her own narcissistic ego to be flagellated by her inner child. It's a very sad way to live.



Beezie Wacks @beezie_wacks · Sep 11



Hey @ashleygyovik you went to law school and achieved a high GPA with such diligence at [@SantaClaraUniv](#) So how supported were you at work? [#ashleygyovik](#)



Beezie Wacks
@beezie_wacks



[@_shantini_](#) You're brilliant. About A: The company gave her paid leave, she wasn't satisfied. She wanted an investigation, she wasn't satisfied. Seemed like she wanted to control her employer. [#narcissist](#) [#toxic](#)

4:38 PM · Sep 10, 2021 · Twitter Web App

Mel Nayer (@mel_nayer, Twitter)



mel nayer
@mel_nayer



Replying to [@ashleygjovik](#)

And I'm not telling you to destroy evidence. By all means share them with ER, just not publicly where people in your org could be put at risk.

6:20 PM · Aug 21, 2021 · Twitter for iPhone



mel nayer
@mel_nayer



Replying to [@cherthedev](#) and [@ashleygjovik](#)

I do not work for Apple or ER or such. Threats are anecdotal. Posting screenshots of an active HR investigation puts everyone involved at risk because a search can be done on who these individuals are on LinkedIn by the timeline and title shared.

11:54 PM · Aug 21, 2021 · Twitter for iPhone





mel nayer
@mel_nayer



Replying to @ashleygjovik

You are paranoid af, which I can understand, workplace abuse causes serious trauma. I don't work for Apple, look me up. How exactly does a concern for the identities of a confidential HR investigation threaten/intimidate you? That was NOT my intention at all.

12:24 AM · Aug 22, 2021 · Twitter for iPhone



Tweet your reply

Reply



Ashley M. Gjovik @ashleygjovik · 23m



Replying to @mel_nayer

I'd be certain your tweets are indeed Apple backed trolling if you also suggested "I consider EAP or medical leave" due to "my mental health issues." That's Apple ER in a nutshell. 🤔

Also "look me up," 1st thing I did & the only Mel Nayer showing up is a well known journalist.



1



Ashley M. Gjovik @ashleygjovik · 22m



Also, you say you're not an Apple employee but you sent me this telling me to "check Slack," you mentioned the Directory app, and also the HR/ER specific org chart tool...



mel nayer @mel_nayer · Aug 19



Hey, this is a fight worth fighting. Over the years I've met several female Apple employees mention the same abuse and they stop short of reporting it due to retaliation. Now they are speaking out because of you. Check slack!



3



19



1



1





mel nayer @mel_nayer · Aug 19

Replying to @timnitGebu and @ashleygjovik

I am following/supporting her. I can't help to think though, that if [#AshleyGjovik](#) were Black Apple would have fired her weeks ago. White women, even when they are victims of workplace abuse, are treated with a level of privilege.



1



4



This Tweet was deleted by the Tweet author. [Learn more](#)



Ashley M. Gjovik @ashleygjovik · Aug 21, 2021

I think we both want [#Apple](#) to be successful, Beezie. Let's work together instead of against each other. ❤️

I know it will be painful to reckon with the way things have been, but the way things can be are worth the work. I'm willing to help Apple get there. I hope you are to!



12



This Tweet was deleted by the Tweet author. [Learn more](#)



Ashley M. Gjovik

@ashleygjovik

Replying to @mel_nayer @tnare and @DavidPluskal

If during the lawsuits we track down your account & see you work/consult for Apple, then your note just now: "people at Apple have been fired for sharing less" won't age well. Then you're not "just trying to help," you are actually threatening & intimidating a whistleblower

4:00 PM · Aug 21, 2021 · Twitter Web App

2 Retweets 18 Likes



Vallery Lancey @vllry · Aug 16

I just looked this up. It still exists.



Ashley M. Gjøvik @ashleygjovik · Aug 12

#Apple makes great products, & some workers have a great experience, but some don't. Everyone who knows me at work knows I've dealt with more abuse than anyone should have. (See: "Make Ashley's Life a Living Hell"... & they really did). No one seems surprised I finally broke.

22892159: Make Ashley's Life a Living Hell

Make Ashley's Life a Living Hell
Created by [REDACTED] on September 28, 2015 at 10:22 PM

• SUMMARY
[REDACTED]

Discussion ▾ Related Problems Related Tests

9/28/15, 10:22 PM [REDACTED] **ORIGINATOR**
[REDACTED] I think this one's on you.
Added to the problem's description

9/28/15, 10:23 PM [REDACTED] set Milestone to [REDACTED]

9/28/15, 10:23 PM [REDACTED] **RESOLVER**
MUAHAHAHAHAHAHAHAH
Milestone set to [REDACTED]
Priority set to 1

14

70

293



mel nayer @mel_nayer · 3h

InNOway condoning the workplace abuse @ashleygjovik is claiming. But this is an ACTIVE @Apple investigation and the managers accused are now receiving death threats. Stop sharing confidential info/screenshots that could reveal identity of those involved. #ashleygjovik #apple

1



1



mel nayer @mel_nayer · 3h

After a search in org chart/directory , the identity of these managers is now known and their lives are at risk.

3



First Name (@FirstNa47437596)



FirstnameBunchofnumbers
151 Tweets

 King District Court - Kcdc



ame: Gjovik, Ashley Marie - Respondent

Follow

FirstnameBunchofnumbers
@FirstNa47437596

@ me if you are being personally victimized by Ashley Gjovik and I'll post screenshots of it here.

 Joined June 2021

0 Following 0 Followers

Tweets

Tweets & replies

Media

Likes

 **Pinned Tweet**



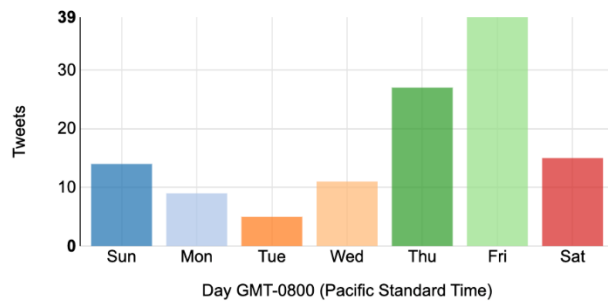
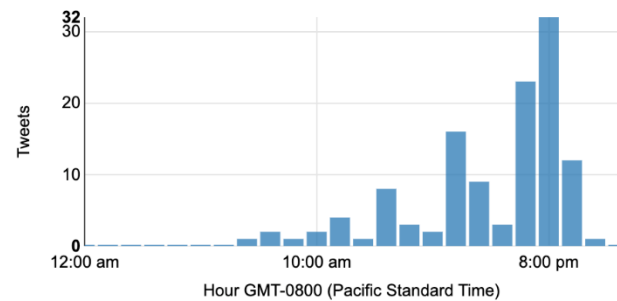
FirstnameBunchofnumbers @FirstNa47437596 · 14h 

Since I'm not affiliated with any parties in any cases, I'm just gonna go ahead and park her abusive tweets here, just in case anyone wants to take action on their own behalf and others she is suing are forced to delete proof of her bad behavior.



**@FirstNa47437596** **King District Court - Kcdc****Name:** Gjovik, Ashley Marie - Respondent

Screen name	@FirstNa47437596	Tweets	123
Display name	FirstnameBunchofnumbers	Following	0
Description	Fuck Apple. Ashley's a bitch.	Followers	0
Location		Likes	1
URL		Lists	0
Date joined	Thu Jun 24, 2021		
Most recent post	Sun Feb 13, 2022		
Twitter user ID	1408219697108058113		
Tweet language	en		
Recent tweets per week	3.6		
Retweet ratio	10%		

Tweets by day of week Last 120 tweets**Tweets by hour of day** Last 120 tweets

accountanalysis

120 Tweets

Load More

@FirstNa47437596

Analyze

120 selected out of 120 retrieved Tweets.

**FirstnameBunchofnumber**

@FirstNa47437596

123

0

0

1

0

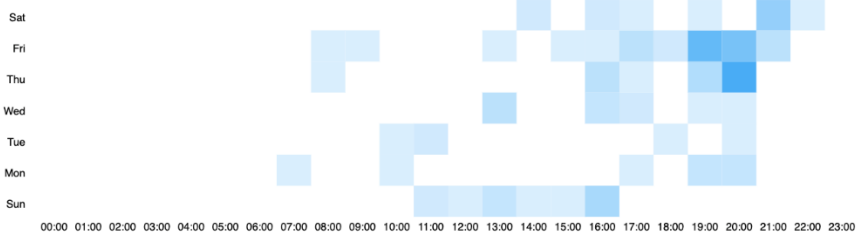
TWEETS FOLLOWING FOLLOWERS LIKE LISTED

Fuck Apple. Ashley's a bitch.

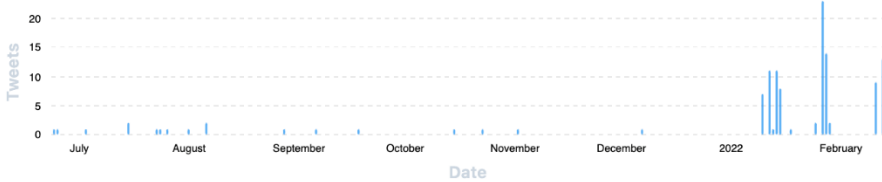
📅 2021-06-24, 17:25 (8 months ago)

🔑 1408219697108058113

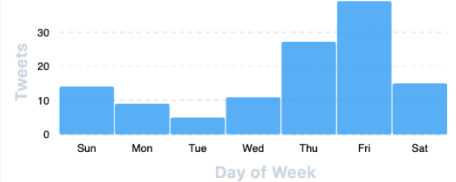
Daily Rhythm



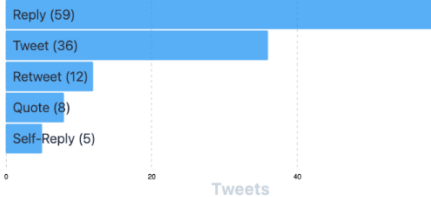
Tweetvolume by Date



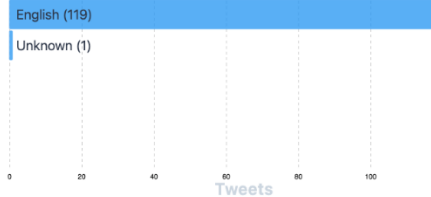
Day of Week



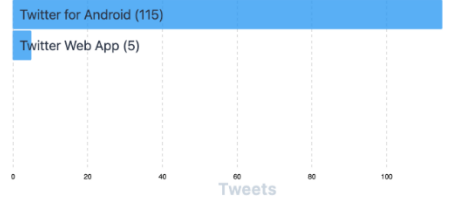
Tweet Type



Language of Tweets



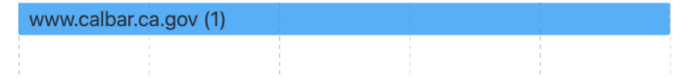
Used Interface



Used Hashtags



Hostnames of URLs





FirstnameBunchofnumbers @FirstNa47437596 · Feb 11

calbar.ca.gov/Admissions/Mor...



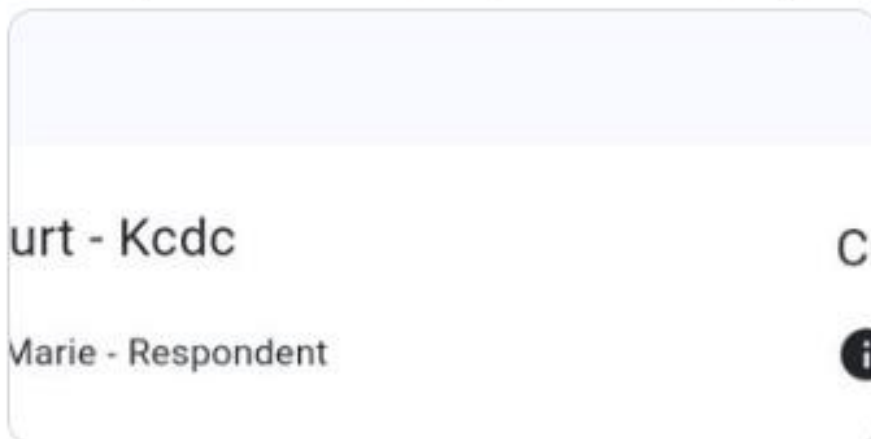
FirstnameBunchofnumbers @FirstNa47437596 · Feb 11

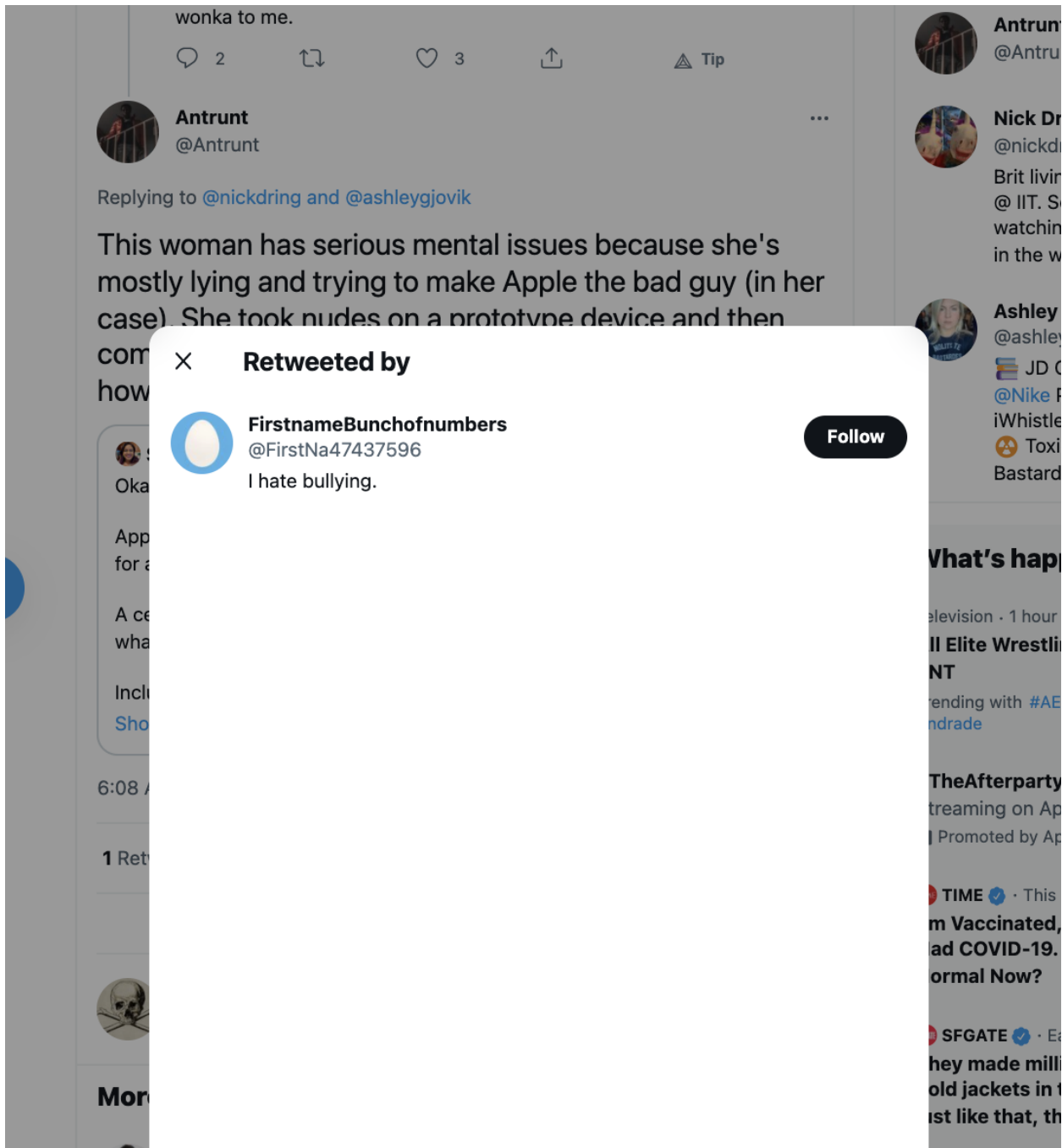
Can you still be admitted to the bar if you have had an anti-harassment judgement filed against you? Asking for Ashley Gjovik



FirstnameBunchofnumbers @FirstNa47437596 · Feb 11

A search of public records indicates Ashley has a court date coming up!





FirstnameBunchofnumbers
@FirstNa47437596



I don't care about any company. I'm here for the personal attacks.

9:32 AM · Feb 20, 2022 · Twitter for Android



A fun pack of unsubstantiated charges against all kinds of people.



Apple manager Ricky Mondello & employees Cher Scarlett & Shantini Vyas called me a liar, predator, racist, inconsequential, not a real whistleblower/activist; & described my protected activities as a vendetta, warpath, perjury, fabricated nonsense, misleading rhetoric, & misinfo.



Q. What's the best way to use a laptop? The computer at home? Or is the definition of home now *on-the-go* and using the size of

to write an unpublished letter would put in better odds" (Gibson, 2004, p. 100).
 "I'm honestly 100% sure that I did not cheat" (Gibson, 2004, p. 100).
 "I believe I did the right thing" (Gibson, 2004, p. 100).
 "I'm not sure if I did the right thing" (Gibson, 2004, p. 100).
 "I'm not sure if I did the right thing" (Gibson, 2004, p. 100).
 "I'm not sure if I did the right thing" (Gibson, 2004, p. 100).

without exception, the women make things happen. To those afraid to open up,

Bring the net's long line *approximately*
1. Evaluate the rest of others. Trade

4. *Staphylococcus aureus* is a gram-positive, spherical bacterium that is commonly found on the skin and in the nose of humans. It is a facultative anaerobe, meaning it can grow in the presence or absence of oxygen. *S. aureus* is a major cause of skin infections, such as abscesses and boils, and is also responsible for a variety of systemic infections, including pneumonia, sepsis, and food poisoning. It is highly resistant to many antibiotics and disinfectants, making it a significant public health concern.

its own people. (Shirley Maubley)
 My, high, to me of Nations, among
 my country, of which.

Copyright © 2006 John Wiley & Sons, Ltd.



FirstnameB

Attn someone

Cher Scarlet

Do you conc

code of con

1

[Show this thread](#)

Firstname P

She's also u

the same way

6

Q 1

FirstnameP

Firstname
@cantoclaro

@santaciana
that reflects

10

Q

Attn someone at @SantaClaraUniv: could you review the cyberbullying of Cher Scarlett coming from the account of your law student @ashleygjovik? Do you condone this behavior? Is this in line with the the terms of your code of conduct?

1 1 1 1 Tip

[Show this thread](#)

She's also using [@pugnaciouspoet](#) - same MO - Cher-themed account with the same writing style

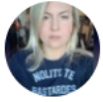
1 1 1 Tip



[@santaclaralaw](#) this is a bad case of cyberbullying by one of your students that reflects poorly on your student body. Do you condone this?



 1
 
 Tip



Ashley M. Gjøvik @ashleygjovik · 12h

...

Disturbing realization tonight. A couple months ago I was approached by 2 women w/ what appeared to be established accounts

They were armed with oppo research & way too much joint interest in me

They tried to bait me, but I didn't bite. They're blocked now

Plz be careful



2



12



Mohammed S Hussain @m_s_hussain · 5h

...

There are some real nasty folks out there...stay safe and take caution.



1



FirstnameBunchofnumbers

...

@FirstNa47437596

Replying to @m_s_hussain and @ashleygjovik

You really shouldn't encourage this. This woman is mentally ill and going after anyone and everyone personally. There's apparently a pending civil case against her for it. Be careful who you associate with.

1:55 PM · Feb 13, 2022 · Twitter for Android





FirstnameBunchofnumbers @FirstNa47437596 · Feb 11

...

I honestly cannot believe this is being allowed to go on in public. She needs a conservatorship or something. Watching her go downhill live on Twitter seems irresponsible, but she won't listen to anyone. Where is the family to step in and help?



Kovacs @notabotfr · Feb 11

Replying to @JeansSquirrel @ashleygjovik and 2 others

Jean, she genuinely sees Apple agents where they don't exist. That's the reason why she was banned from Wikipedia. Shock of the century that she thinks I'm one too. If you really wanted to support her you'd tell her the same.



1



Tip



FirstnameBunchofnumbers Retweeted



Kovacs @notabotfr · Feb 11

...

Replying to @ashleygjovik @JeansSquirrel and 2 others

Hi yes, this is #Apple/#Wikipedia/#God speaking. You were banned from Wikipedia for falsely accusing some random dude of being the woman you're obsessed with. You are mentally ill and need psychological/psychiatric help. Anyone supporting your delusions is not your friend.



2



Tip



FirstnameBunchofnumbers Retweeted



rileysmith @rileysm86 · Jan 28

...

Replying to @DarnellCrosland and @iamcardib

What does that even mean, "followed"? Did he follow her home? To her car? Was he just making friendly conversation as they were walking out? Stop making repugnant and defaming accusations against LaFountain with zero context. He's going to get a huge libel payday from you guys.



2



1



1



Tip

**FirstnameBunchofnumbers** @FirstNa47437596 · Feb 13

...

If Apple turns people into crazies like Ashley Gjovik then they need to shut that shit down NOW



1



1



Tip

**FirstnameBunchofnumbers** @FirstNa47437596 · Feb 13

...

We don't need iPhones this bad, that woman is NUTS



1



Tip

**FirstnameBunchofnumbers** @FirstNa47437596 · Feb 13

...

You know what's so interesting? How one manages to live so comfortably in such an "expensive" area w/plenty of extra funds for wasting lawyers time, no money woes, and no desire to ever get another job.

Who's really funding this? 🤔

Let's see, who is Apple's biggest competitor?



Tip

**FirstnameBunchofnumbers** @FirstNa47437596 · Feb 13

...

Posting random stats about my account does nothing except make you look like a nut ball with matchbox sign



Tip



FirstnameBunchofnumbers Retweeted

**@600nanometer** · Feb 13

...

Replying to [@FirstNa47437596](#)

and the "clue" that she needed to be targeted: radio silence after ashley published a 300 page paranoia report of all her online interactions.

i guess if you don't endorse the conspiracy theory, you're a co-conspirator.



1



1



1



Tip

**FirstnameBunchofnumbers** @FirstNa47437596 · Feb 13

...

The only accounts left engaging her are the Pick Mes who are interested in her, um, other attributes 🤔



1



Tip



FirstnameBunchofnumbers @FirstNa47437596 · Mar 2



Follow

Ashley M. Gjøvik 🔒

@ashleygjovik

Apple & Northrop Grumman Safety Whistleblower
| Ashley Gjøvik v Apple Inc (SOX, CERCLA, OSHA,
CA DoL, & NLRB) | 🗡️ Nolite te Bastardes
Carborundorum

📍 Gagged Gadfly n the Plutocracy

🔗 linktr.ee/ashleygjovik 📅 Joined March 2021

1,692 Following 16.9K Followers

**These Tweets are
protected.**





Tweet



Draken BlackKnight - the vaccine works, idiots @DrakenBlk... · 1h ...
...shouldn't they be offering a fat settlement right about now?

2



1



FirstnameBunchofnumbers
@FirstNa47437596



Replying to @DrakenBlkKn and @ashleygjovik

If they read her TL they see that she's a nutjob and can't even win a case on Twitter or Wikipedia, so they probably aren't much concerned about her winning in a court of law

2:37 PM · Feb 13, 2022 · Twitter for Android



Draken BlackKnight - the vaccine works, idiots @DrakenBlk... · 1h ...
Replying to @FirstNa47437596 and @ashleygjovik

Hi Apple

1



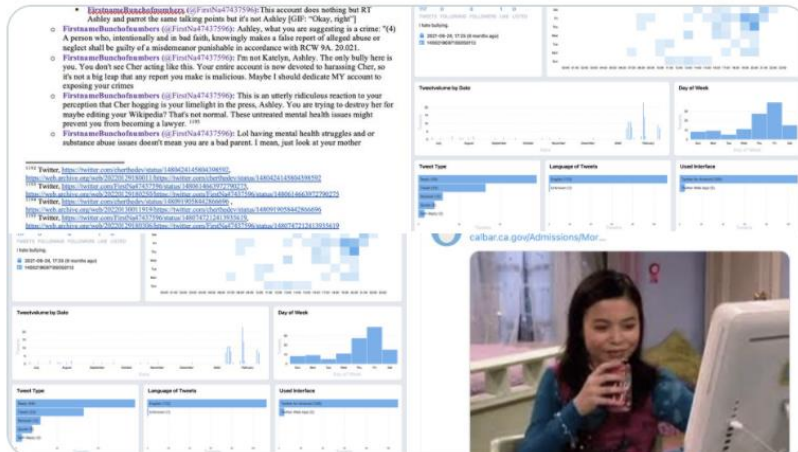
1



Ashley M. Gjovik @ashleygjovik · 29m ...
Indeed.

Hey Apple, we've talked about this.

Go away. Thanks.



More Tweets



FirstnameBunchofnumbers @FirstNa47437596 · Jan 15

...

Don't direct hate at fellow victims of the same injustices. Punching down is never a good look or the right thing to do.



1



Tip



FirstnameBunchofnumbers Retweeted



Ricky Mondello @rmondello · Sep 1, 2021

...

Corporations don't need anyone's defense. They have money, lawyers, and a brand to protect them.

But _the truth_ is critically important. We need to recognize when someone is manipulating the empathy and good will of others to fuel a personal vendetta and warpath.



Shantini @shantinix · Sep 1, 2021

Okay at the risk of "gestures wildly at Twitter"

Apple is a big company. It's got some problems. But it's a great place to work for a lot of people.

A certain employee has made it their mission to bring down Apple through whatever means necessary.

Including straight LIES.

[Show this thread](#)



4



14



143



Tip

[Show this thread](#)

I'mPinkThereforeI'mSpam (@i_mspam, Twitter)'



Ashley M. Gjøvik @ashleygjovik · Sep 16, 2021

...

<30 minutes before I was fired by [#Apple](#).



Ashley M. Gjøvik @ashleygjovik · Sep 9, 2021

I wonder if [#Apple](#) was expecting me to live-Tweet their intimidation?



1



2



24



Tip



I'mPinkThereforeI'mSpam @i_mspam · Sep 16, 2021

...

Sorry, but what on Earth did you expect from them?



2



Tip



asdasrev @asdasrev · Sep 17, 2021

...

have an actual reason to fire her?



1



2



Tip



I'mPinkThereforeI'mSpam

...

@i_mspam

Replying to [@asdasrev](#) and [@ashleygjovik](#)

At-will employment. Any reason or no reason.

8:31 AM · Sep 18, 2021 · Twitter Web App

**I'mPinkThereforeI'mSpam** @i_mspam · 14m

...

Replying to @B_Schmidt and @ashleygjovik

She's a senior manager at Apple and going on a tirade against them over the ground beneath the building. What did she expect to have happen to her?



1



Tip

**Bree Schmidt** @B_Schmidt · 3m

...

Probably for Apple to not violate laws, but what do I know.



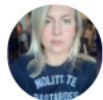
1



1



Tip

**Ashley M. Gjovik** @ashleygjovik · 1m

...

Hey Siri, how do you gather "direct evidence" to prove retaliation for protected activities?



1



1



Tip

**Bree Schmidt**

@B_Schmidt

...

Replying to @ashleygjovik and @i_mspam

Love that one of their spam accounts admits Apple will just fire you rather than address the problem. It's cheaper that way.

12:56 PM · Jan 30, 2022 · TweetDeck



1



3



Tip

**Bree Schmidt** @B_Schmidt · 45m

...

Love that one of their spam accounts admits Apple will just fire you rather than address the problem. It's cheaper that way.



2



1



4



Tip

**I'mPinkThereforeI'mSpam** @i_mspam · 3m

...

Replying to @B_Schmidt and @ashleygjovik

Go smash some avocado on toast.



1



Tip



I'mPinkThereforeI'mSpam

@i_mspam

...

Replying to [@B_Schmidt](#) and [@ashleygjovik](#)

"The nail that sticks out, gets hammered."

2:11 PM · Jan 29, 2022 · Twitter Web App

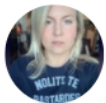


Tip



Tweet your reply

Reply



Ashley M. Gjovik @ashleygjovik · 5s

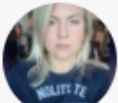
...

Replying to [@i_mspam](#) and [@B_Schmidt](#)

Thanks, Jenna. I'll add that quote to the implicit & explicit threats of violence section of the memo.



Tip



Ashley M. Gjovik @ashleygjovik · Sep 16, 2021

...

The stories I've heard from retail are HORRIFIC. There needs to be a reckoning... and it needs to start with [#Apple](#) retail and AppleCare. It sounds like the things of nightmares over there. 🥺

2



2



Tip



I'mPinkThereforeI'mSpam @i_mspam · Sep 16, 2021

...

You'll never work as an attorney

1



1



Tip

CrissNovak (Reddit)[Single comment thread](#)[See full discussion](#)**crissnovak** • 4y ago • Edited 4y ago

Shantini is my hero, best take on "A" with over 200+ ❤️s. ALOT seem to agree: entitled, obnoxious, toxic, vindictive employee. To me, zero credibility. I would not even want to be on the same sidewalk with that. Why Zoë continues to give "A" the time of day, I don't know, and I've lost all respect for her as a journalist. It's not newsworthy, it's a dumpster fire.

<https://twitter.com/shantini/status/1433270352919072771?s=20>

↑ 1 ↓ Reply Award Share ...

**r/apple** • 4 yr. ago
crissnovak

Ashley Gjøvik fired by Apple.

Discussion

Sorry, this post has been removed by the moderators of r/apple.

↑ 1 ↓

0

Share



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak commented 4 yr. ago

Tweeting doesn't make your story true. I need to hear both sides and I need to see facts before I make a judgement. No doubt, her character was on display with those angry profanity ridden Tweets. Not someone I would ever want to work with.

↑ 76 ↓ Reply Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak commented 4 yr. ago

Santa Clara University Law must be cringing. Prospective law students must be crossing that one off their list. Lol

↑ 68 ↓ Reply Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak commented 4 yr. ago

Good riddance. They should have fired her weeks ago.

↑ 7 ↓ Reply Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak commented 4 yr. ago

I think when the NLRB, EEOC slams the door on Karen's face because there's no case, we'll see more Twitter tirades about how corrupt these agencies are. Dear Apple please don't pay her a fcking dime; awarding toxic behavior will only perpetuate it. She needs to learn a hard lesson in life and gain some maturity.

↑ 2 ↓ ○ Reply ↗ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak replied to **newtothered** 4 yr. ago

Exactly, she's "badass" with a part-time Santa Clara JD, she's going to get steamrolled lololol

↑ 2 ↓ ○ Reply ↗ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak replied to **GoneCollarGone** 4 yr. ago

She was NOT a senior executive at Apple. Not even an engineer. She was a Sr. Program Manager. I think she exaggerates her achievements/bio, which tanks her credibility right out the gate.

↑ 29 ↓ ○ Reply ↗ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak replied to **poo4** 4 yr. ago

And then when that didn't pan out for her, seems like she tried to do the same sht with Apple. The only thing toxic in all of this is HER. I wouldn't hire this person. I wouldn't rent to this person. I sure as hell wouldn't date this person. She needs serious help.

↑ 26 ↓ ○ Reply ↗ Share ...



r/apple • [deleted by user]

crissnovak commented 4 yr. ago

I honestly don't know a respectable lawyer that would go down this path with her, especially with all her Tweets out there. If she really did leak IP, I think she's basically screwed. Apple (w/it's army of lawyers) can sue her and it would be an easy win because it's a simple breach of contract case. Her counter suit for retaliation/harassment will be very challenging especially if her coworkers don't have her back. They may be enjoying all that Apple \$\$\$\$. Lawsuit would be chump change for Apple, but will certainly bankrupt her. I've never seen anyone so intent on ruining their own reputation/livelihood and for what "likes"? From her Tweets, I think she has this grandiose delusion that she's some "badass", but I think she comes off as a Karen. Shame on the "journalists" (ahem Verge) that are exploiting her and just adding to her ruin. I think what she needs is mental help; what she doesn't need is people motivating her to dig an even deeper hole she's in. Sad

↑ 12 ↓ ○ Reply ↗ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak replied to **bartturner** 4 yr. ago

A whistleblower of what illegal activities at Apple? Simply calling yourself a "whistleblower" doesn't absolve you from your employment contract with Apple. She allegedly shared intellectual property, that's an immediate fire able offense. Good on Apple on this one. I'm actually impressed by the way they handled her. Didn't stoop down to her level. They just left her alone to angry Tweet for months so she can expose herself. Brilliant move by a brilliant company.

↑ 1 ↓ ○ Reply ↗ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak commented 4 yr. ago

I so hope Apple, Northrop Grumman, Irvine Company sue her and teach her a lesson. I think She thinks she going to get rich, but she's going straight to the poor house. \$300K + RSUs + healthcare + tuition reimbursement all up in smoke for this nonsense. Go Ashley go!

↑ 3 ↓ ○ Reply ↗ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak replied to **cherpxo** 3 yr. ago

Lmao "familiar"?! Girl, you better know it solid or get Gjøviked! If you bring little value to Apple (can't code your way out of a paper cup) they'll fire you for the slightest transgression. Apple is ruthless like that.

↑ 1 ↓ ○ Reply ➦ Share ...



r/apple • Apple fires senior engineering program manager Ashley Gjøvik for allegedly leaking information

crissnovak replied to **cherpxo** 4 yr. ago

You seem to be Tweeting/Redditing a lot on company time, even that's enough to get you fired. Hopefully you're not doing it on company devices.

↑ 0 ↓ ○ Reply ➦ Share ...



r/apple • [deleted by user]

crissnovak commented 4 yr. ago

Naeh, chubby side +baby teeth lol

↑ 3 ↓ ○ Reply ➦ Share ...



r/apple • Apple's fortress of secrecy is crumbling from the inside - The Verge

3 yr. ago

[removed]

↑ 9 ↓ ○ Reply ➦ Share ...



r/apple • Tim Cook says employees who leak memos do not belong at Apple, according to leaked memo

crissnovak commented 3 yr. ago

I feel like it's only a matter of time now before all of Zoë's sources will get fired. Apple doesn't mess around and I think this is a message that they about to clean house. Hope it was worth it (FYI, I'm still preordering the new iPhone)...Look at Gjøvik, went from \$300K+ plus RSUs (poof!) to a GoFund me. Keep blabbing to Zoe, girls, it's clicks and money in her pocket while y'all go bankrupt going up against Apple.

↑ 3 ↓ ○ Reply ➦ Share ...

Further Parthing (@one_more_time_2, Twitter)

accountanalysis

25 Tweets

Load More

@one_more_time_2

Analyze

25 selected out of 25 retrieved Tweets.

**Further Parthing**

@one_more_time_2



25 29 2 19 0

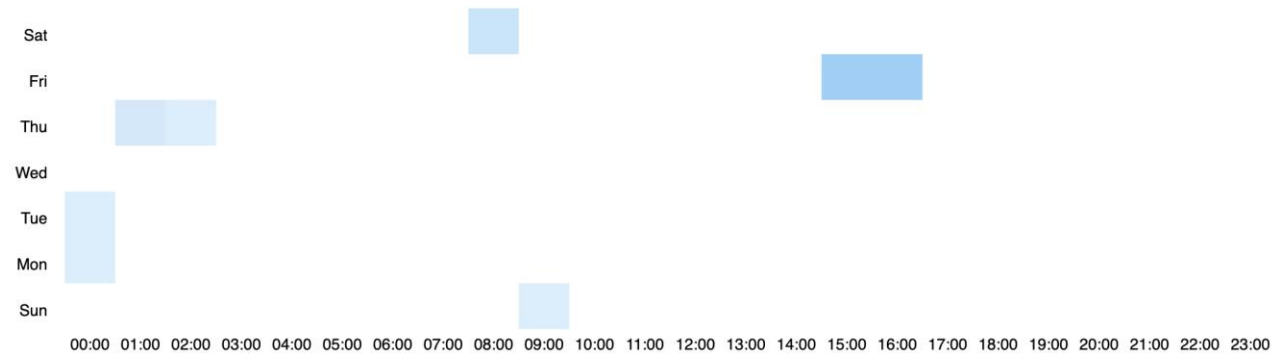
TWEETS FOLLOWING FOLLOWERS LIKES LISTED

When the paparazzi are your friends, it makes your enemies even sweeter.

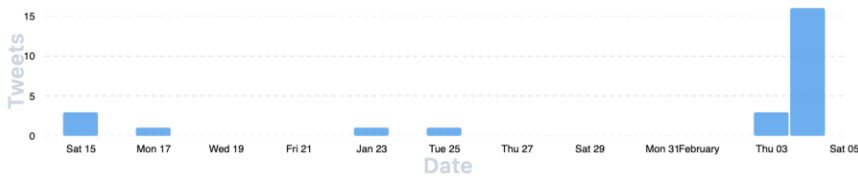
📅 2022-01-15, 07:31 (25 days ago)

👤 1482374774881861632

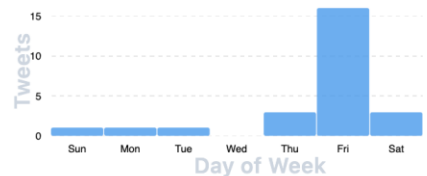
Daily Rhythm



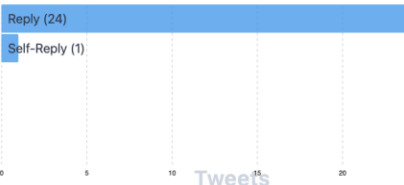
Tweetvolume by Date



Day of Week



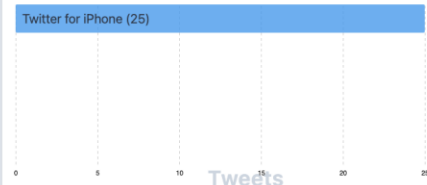
Tweet Type



Language of Tweets



Used Interface



accountanalysis

25 Tweets

Load More

@one_more_time_2

Analyze

Used Hashtags

Tweets

Hostnames of URLs

registry.theknot.com (1)

0.0

0.2

0.4

0.6

0.8

1.0

Tweets

Replied Users

@ashleygjovik (19)

@cherthedev (4)

@thesignalsnetw (1)

0

5

10

15

Tweets

Retweeted Users

Tweets

Quoted Users

Tweets



@one_more_time_2 is not active, score might be inaccurate



4.8 / 5



Bot type scores



Echo-chamber	0.2
Fake follower	4.8
Financial	1.0
Self declared	3.6
Spammer	3.7
Other	4.4

Bot score based on



All features: 4.8

8% of accounts with a bot score above 4.8 are labeled as humans.

Language-independent: 4.8

Majority tweet language:

en



Profile



Tweet



Details



Feedback



Ashley M. Gjøvik @ashleygjovik · 20h

O hai. @Apple, this u? 🤖🤖 [twitter.com/one_more_time_...](https://twitter.com/one_more_time_2)

more_time_2 is not active, score might be inaccurate 4.4

Bot score based on

0.6	All features:	4.4
4.0	15% of accounts with a bot score above 4.4 are labeled as humans.	
1.0		
3.6	Language-independent:	4.4
3.6	Majority tweet language:	en
4.4		

Profile Tw

Ashley Gjovik v Apple Inc - Propaganda, Threats, & Retaliation Campaign Evidence Report for US ...

Further Parthing @one_more_time_2 · 1m

I don't think there's nice things in there, nor do your opinions of others sound nice either. It seems hypocritical to make a 200+ NLRB complaint but not share written inventory of those YOU have offended with your words and actions.

Further Parthing @one_more_time_2 · 3m

Replying to @ashleygjovik

It looks like every person on Twitter handle with an opinion counter to

Further Parthing @one_more_time_2 · Feb 3

Replying to @cherthedev and @chelseyglasson

You didn't apply to work for any of these companies, did you?

Further Parthing @one_more_time_2 · Feb 3

Replying to @cherthedev

No one wants to hire you because you are a liability in perception. Fix that problem and maybe someone will change their mind. Can you guarantee you won't share what the company doesn't want you to share with the public? What happened to working for @SeattleCCA?

This Tweet is from an account you blocked.

[View](#)

7 5 Tip



Further Parthing

@one_more_time_2

Replying to @ashleygjovik and @Apple

Whistleblowers deserve a better voice than yours or Chers or any one person. I hope Twitter shuts you down for some perspective. Your Tweets are like a feminist version of @ProudBoysUS @TrumpWarRoom

3:54 PM · Feb 4, 2022 · Twitter for iPhone

Tip

**Further Parthing**

11 Tweets

Follow**Ashley M. Gjovik** @ashleygjovik · Feb 3

...


 **#Apple** orchestrated an extensive propaganda & harassment campaign against me starting with damaging false accusations, & numerous threats of retaliation, termination, litigation, blacklisting, & violence. This is now part of my NLRB, US & CA DOL cases.



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scribd.com

Ashley Gjovik v Apple Inc - Propaganda Campaig...
 Ashley Gjovik v Apple Inc - Propaganda, Threats, &
 Retaliation Campaign Evidence Report for US ...



3



9



113



Tip

**Further Parthing** @one_more_time_2 · 1m

...

I don't think there's nice things in there, nor do your opinions of others sound nice either. It seems hypocritical to make a 200+ NLRB complaint but not share written inventory of those YOU have offended with your words and actions.



Tip

**Further Parthing** @one_more_time_2 · 5m

...

Now people will associate whistleblowing with this 200+ page NLRB complaint that is too saturated with bias. Your bias. It's unconscionable how you shared so many names.



Tip

**Further Parthing** @one_more_time_2 · 6m

...

Replying to @ashleygjovik and @Apple

I hope you use your powers for good and not this pedantry of attacking every minute bit of dissension. What a joke. You have only harmed whistleblowing with your distracting tirades.



Tip

**Further Parthing**

20 Tweets

Follow**Ashley M. Gjøvik** @ashleygjovik · 7m

...

Replying to @one_more_time_2 and @Apple

You're posting too quickly. Please slow down so I can WayBack Archive all this bullshit you're spewing.



2



Tip

**Further Parthing** @one_more_time_2 · 2m

...

Opinions are just opinions and ppl don't agree just like you call what I wrote bullshit. I won't argue, you can think what you like! Sticks and stones..but words won't hurt. Didn't you learn that?



Tip

**Further Parthing** @one_more_time_2 · 3m

...

Replying to @ashleygjovik and @Apple

I am following your complaint becuz it is interesting. But the content is just so overwhelming, it reads more like a high school letter about how you didn't like what others wrote about you. It is a waste of government resources just to read it



Tip

**Further Parthing** @one_more_time_2 · 11m

...

Replying to @ashleygjovik and @Apple

No, none of those are. But one can see how you think that is. There are lots of people out there not in tech who read about you and then come here and lurk and are appalled by your tweets.



2



Tip